No. 559.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

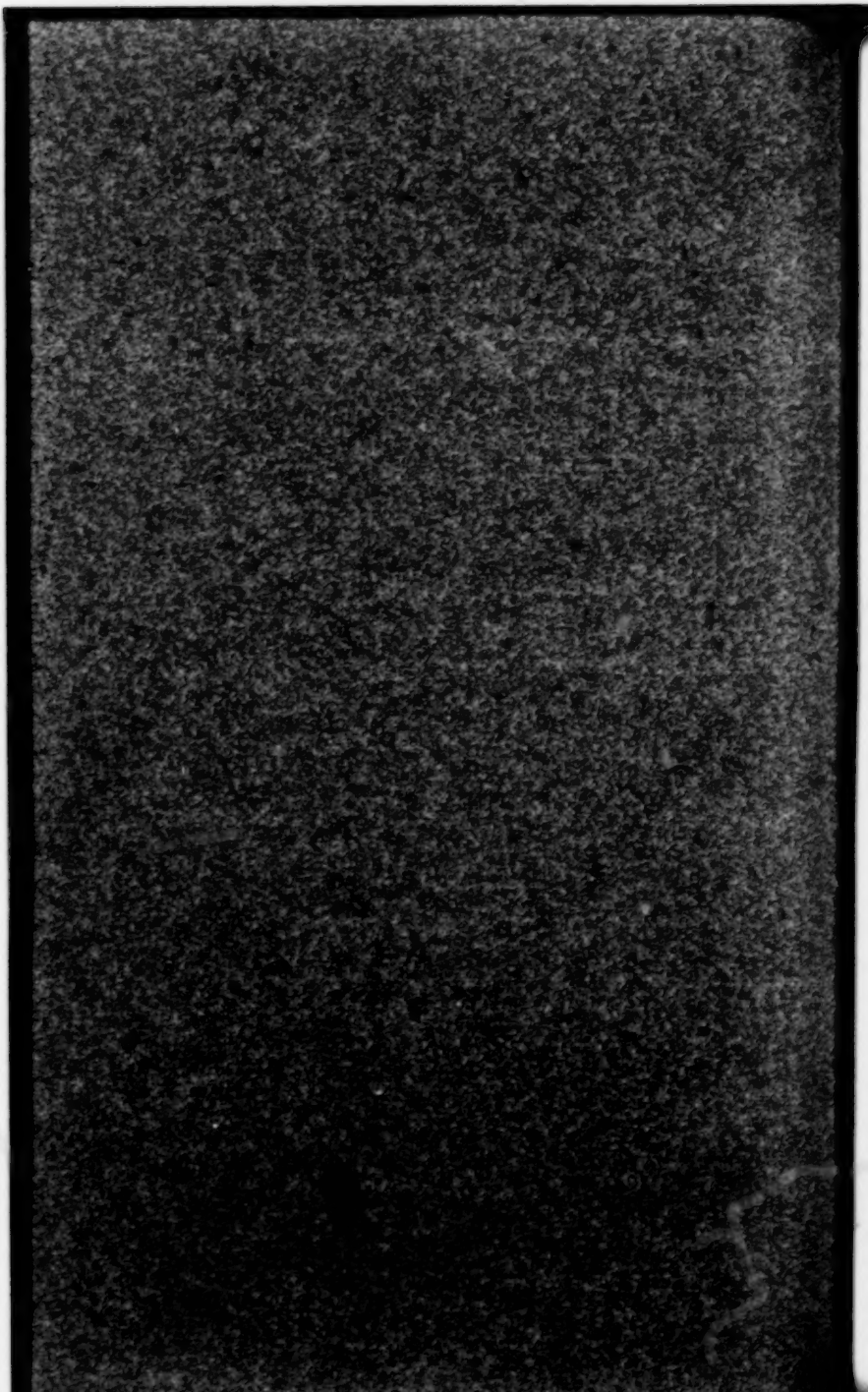
TRUMAN H. NEWBERRY ET AL., PLAINTIFFS IN ERROR,

v.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE DEFENDANTS IN ERROR.



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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

TRUMAN H. NEWBERRY ET AL., Plaintiffs in Error, v. THE UNITED STATES OF AMERICA.	No. 359.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR THE UNITED STATES.

The plaintiffs in error are seventeen of one hundred and thirty-five persons who were indicted in the District Court charged with a conspiracy to violate what is known as the Corrupt Practices Act by expending, or causing to be expended, to secure the nomination and election of plaintiff in error Truman H. Newberry to the United States Senate, more money than is permitted by the Act of Congress. Some of the defendants entered pleas of *nolo contendere*. Newberry and the sixteen other plaintiffs in error were convicted, and the remaining defendants were acquitted.

STATEMENT AS TO THE RECORD.

The record, as originally certified and printed, contains two errors: By inadvertence, the wrong indictment had been copied into the record, and, in addition to the requests for instructions to the jury which were made a part of the bill of exceptions, there had been copied, on pages 982–989, the same requests for instructions and also others which had not been made a part of the bill of exceptions.

These errors have been corrected by a stipulation of counsel, which has been printed as a supplemental record. The indictment upon which the conviction was based, therefore, is not that which appears in the original record, but is set out in the supplemental record at page 1013; and the requests for instructions to the jury appearing on pages 982–989 are not a part of the record, and only the requests for instructions found in the bill of exceptions are open to consideration.

The stipulation mentioned above refers, at page 1012, to another matter which it is proper to mention to the court. The verdict was returned on March 20, 1920. On the same day, a motion in arrest of judgment was made and overruled, and thereupon judgment was entered upon the verdict and the convicted defendants were sentenced, and the court entered the following order:

> On application of said convicted defendants, it was ordered that a stay of proceedings herein be granted for the term of 90 days to enable said convicted defendants to

> move for a new trial, settle bill of exceptions, sue out a writ of error or certiorari, or take such other proceedings as they may be advised upon their entering upon their recognizance in open court in the sum of $5,000 each as hereinafter recited. (Rec., p. 991.)

No motion for a new trial was made. This writ of error, however, was sued out and filed on June 19, 1920, ninety-one days, but exactly three months, after the entry of the judgment. (Rec., pp. 1010-1011.) It was therefore sued out and filed in time. The bill of exceptions, however, was signed and filed on the same day—that is, June 19, 1920. This was after the term of court at which the judgment was entered, since the next term of court was fixed by law to begin the first Tuesday in June. It was also 91 days after the entry of the judgment and the order allowing 90 days within which to file a bill of exceptions. Appended to the bill of exceptions, when signed by the judge, was a stipulation signed by opposing counsel and dated the same day. Nothing, however, was stipulated except that the evidence was correctly set out in the bill of exceptions. The stipulation was as follows:

> It is hereby stipulated and agreed by and between the attorneys for the plaintiffs-in-error and the defendants-in-error, that the foregoing contains all the evidence given upon the trial of this cause tending to establish the guilt of the defendants named in the

> title of the foregoing bill of exceptions, or any or either of them, of the offense charged in the indictment. (Rec., p. 956.)

The Solicitor General has deemed it his duty to call this state of the record to the attention of the court, so that, if the court is of opinion that the trial judge was without power to allow a bill of exceptions 91 days after the entry of the judgment, he will not be in the position of asking the court to consider questions arising upon a bill of exceptions which is not properly before the court. Having thus called the matter to the attention of the court, he presses no contention based on it and is content to submit the entire case and all the questions raised by counsel if the court is of opinion that it can consider the bill of exceptions. He is also entirely willing that the court shall have before it the exact facts with respect to the signing of the bill of exceptions and has accordingly incorporated them in the stipulation above mentioned. These facts are as follows:

> The stenographic transcript of the evidence and proceedings in this case was very voluminous, consisting of several thousand pages. Upon the receipt of this transcript counsel for the plaintiffs in error undertook to prepare a bill of exceptions, and were engaged in this work until about June 7, 1920, when they submitted to counsel for the Government their draft of a bill of exceptions. From that time until the presentation of the bill of exceptions to the trial

judge on June 19, 1920, the opposing counsel had been working constantly and laboriously in the effort to agree on the contents of the bill of exceptions. Counsel for plaintiffs in error were anxious that this be done without asking for a further extension of time. They had assumed all along that, if filed on June 19, it would be in time. There was, however, nothing said at any time between them and counsel representing the Government as to when the time would expire. The bill of exceptions was nearly completed on June 18, and on that date counsel for plaintiffs in error stated to the trial judge, in the presence of counsel for the Government, that the bill of exceptions would be ready for presentation on the next day, and the judge agreed to meet counsel for that purpose, and neither on June 18 nor when the bill was presented on the 19th was anything said by the judge or by counsel on either side, or any question raised as to whether the time within which it could be settled and filed had expired. (Supp. Rec., pp. 1012–1013.)

STATUTE INVOLVED.

The conviction is for a conspiracy to violate the Act of Congress of June 25, 1910 (36 Stat., c. 392, p. 822), as amended by the Act of Congress of August 19, 1911 (37 Stat., c. 33, p. 25), by expending more money to secure a nomination and election to the United States Senate than is permitted by those Acts. It is a provision of the amendatory

act of August 19, 1911, which, it is specifically charged, the plaintiffs in error conspired to violate.

The legislation of this character began with the Act of June 25, 1910. That Act evinces concern on the part of Congress over the amount of money that should be expended for the purpose of securing an election to Congress. At that time Senators were not elected by popular vote, and the Act was directed alone to the election of Representatives in Congress. It contained no reference to the nomination of candidates, but applied only to the general election of such Representatives.

Manifestly the evil at which the legislation was directed was the lavish expenditure of money for the purpose of influencing elections. It was, however, a new departure, and Congress proceeded cautiously. It did not undertake to prescribe what should constitute the legitimate and lawful purposes for which expenditures in any amount should be made. Apparently it was thought that to require publicity to be given to all contributions and expenditures would be a potent influence to curb extravagant expenditures for this purpose. Hence its first step, taken by the passage of the Act of June 25, 1910, was simply to require this publicity.

As the Act applied to elections which are usually a choice between the nominated candidates of opposing political parties, it was recognized that,

as a rule, the bulk of contributions would be received and disbursed by committees of these political parties. The Act, therefore, in section 1, defined the term "political committee," for the purposes of the Act, as including "the national committees of all political parties and the national congressional campaign committees of all political parties and all committees, associations, or organizations which shall in two or more States influence the result or attempt to influence the result of an election at which Representatives in Congress are to be elected." By sections 2, 3, and 4, every such committee was required to keep an accurate account of all money received and disbursed; and sections 5 and 6 provided that a sworn statement of these receipts and disbursements should be filed with the Clerk of the House of Representatives within 30 days after the election. This much of the Act, therefore, was directed at the activities of political parties rather than individuals. It did not apply even to a committee organized for the purpose of influencing the election of Representatives in Congress if its activities were confined to a single State.

Section 7 required every person, firm, association, or committee, other than political committees, as before defined, that shall expend or promise money for the purpose of influencing or controlling the election of Representatives in Congress to make a similar report unless the money was con-

tributed to a political committee. But this again is confined to expenditures for the purpose of influencing the election in two or more States.

The Act contains no provision applying alone to a candidate. Section 8, however, is as follows:

> That any person may in connection with such election incur and pay from his own private funds for the purpose of influencing or controlling, in two or more States, the result of an election at which Representatives to the Congress of the United States are elected all personal expenses for his traveling and for purposes incidental to traveling, for stationery and postage, and for telegraph and telephone service without being subject to the provisions of this Act.

In other words, money expended by any one from his own private funds and for his personal expenses, as specified, was not required to be made public whether he happened to be the candidate or not. Plainly, it was not deemed necessary to curb or discourage the use by a candidate of his own money in any amount so long as his expenditures should be confined to the necessary personal expenses incident to making a canvass, becoming acquainted with the voters, and enabling them to know him and judge of his qualifications.

The purpose of the amendatory Act of August 19, 1911, was to correct the defects which experience had discovered in the Act of 1910 and to extend its scope accordingly.

Apparently Congress concluded that the lavish expenditure of money would not be much discouraged so long as it was not made public until after the election, as provided in the Act of 1910. If the publication should be made before the election, so that the voters would have knowledge of the expenditures before they came to vote, the deterring influence would be much more potent. Accordingly, the Act of 1910 was amended so as to require these reports to be made, first, not less than 10 days before the election, and, second, additional reports to be made each sixth day thereafter until the election, with a final report to be made within thirty days after the election.

Having thus changed the original Act, Congress then enacted section 8, for a conspiracy to violate which the plaintiffs in error have been convicted. This section, for the first time, extends the operation of the law to expenditures in securing a *nomination* as well as an election, applies it to a Senator as well as a Representative in Congress, and fixes a limit beyond which the candidate may not incur or cause to be incurred expenses. It defines the word "candidate" so as to include—

> all persons whose names are presented for nomination for Representative or Senator in the Congress of the United States at any primary election or nominating convention, or for indorsement or election at any general or special election held in connection

> with the nomination or election of a person to fill such office, whether or not such persons are actually nominated, indorsed, or elected.

It then requires that every person who shall be a candidate for nomination at any primary election or nominating convention, or for election at any special or general election for either Senator or Representative in Congress shall, not less than ten days or more than fifteen days before the day of holding such primary election or nominating convention, and before the day of the general or special election, file with the clerk of the House of Representatives or the secretary of the Senate—

> a full, correct, and itemized statement of all moneys and things of value received by him or by any one for him with his knowledge and consent, from any source, in aid or support of his candidacy, together with the names of all those who have furnished the same in whole or in part;

and also an itemized account—

> of all moneys and things of value given, contributed, expended, used, or promised by such candidate, or by his agent, representative, or other person for and in his behalf with his knowledge and consent, together with the names of all those to whom any and all such gifts, contributions, payments, or promises were made, for the purpose of procuring his nomination or election.

An additional report is then required to be filed within 15 days after the primary election or nominating convention and within 30 days after any general or special election or an election by the legislature. There are some special provisions as to what these statements shall contain, and then comes the particular part of the Act under which the plaintiffs in error were convicted as follows:

> No candidate for Representative in Congress or for Senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the State in which he resides: *Provided*, That no candidate for Representative in Congress shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding five thousand dollars in any campaign for his nomination and election; and no candidate for Senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding ten thousand dollars in any campaign for his nomination and election: *Provided further*, That money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or for his necessary personal expenses, in-

> curred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense and need not be shown in the statements herein required to be filed. (37 Stat., p. 28.)

In connection with this Act it will also be necessary to consider section 332 of the Criminal Code of the United States, which is as follows:

> Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

The Michigan statute fixing a limit upon expenditures for campaign purposes is as follows:

> No sums of money shall be paid, and no expenses authorized or incurred by or on behalf of any candidate to be paid by him in order to secure or aid in securing his nomination to any public office or position in this State, in excess of twenty-five per cent of one year's compensation or salary of the office for which he is candidate: *Provided,* That a sum not exceeding fifty per cent of one year's salary may be expended by the candidates for Governor and Lieutenant Governor; or where the office

is that of member of either branch of the Legislature of the State, the twenty-five per cent shall be computed on the salary fixed for the term of two years: *Provided further*, That no candidate shall be restricted to less than one hundred dollars in his campaign for such nomination. No sums of money shall be paid and no expense authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this State, in excess of twenty-five per cent of one year's salary or compensation of the office for which he is nominated; or where the office is that of member of either branch of the Legislature of the State, the twenty-five per cent shall be computed on the salary fixed for the term of two years: *Provided*, That no candidate shall be restricted to less than one hundred dollars. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate contrary to the provisions of this Act. (Michigan Public Acts, 1913, No. 109, section 1, pp. 189–190.)

THE INDICTMENT.

There were six counts in the indictment as returned. The plaintiffs in error, however, were convicted only on the first count after that count had been consolidated with the fourth, and hence it is only necessary to mention that count. After setting out the pendency of a primary election to be held under the laws of Michigan on August 27,

1918, for the nomination, among other things, of candidates for the office of United States Senator to be filled at the general election in November, 1918, and naming those who were candidates of the opposing parties in that primary, the conspiracy is charged by averring that the parties named as defendants—

> continuously and at all and divers times throughout the period of time from December 1, 1917, to and including said November 5, 1918, at and within said Southern Division of said Western District of Michigan, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to commit an offense against the United States, to wit, the offense on the part of said Truman H. Newberry of wilfully violating the Act of Congress approved June 25, 1910, as amended by the Acts of August 19, 1911, and August 23, 1912, by giving, contributing, expending, and using and by causing to be given, contributed, expended, and used, in procuring his nomination and election as such Senator at said primary and general elections, a sum in the aggregate in excess of the amount which he might lawfully give, contribute, expend, or use or cause to be given, contributed, expended, or used for such purpose under the laws of said State of Michigan, to wit, the sum of one hundred thousand dollars, and by giving, contributing, expending, and

> using and causing to be given, contributed, expended, and used in procuring his nomination and election as such Senator, at said primary and general elections, a sum in the aggregate in excess of ten thousand dollars, to wit, said sum of one hundred thousand dollars, and on the part of said other defendants of aiding, counseling, inducing, and procuring said Truman H. Newberry so to give, contribute, expend, and use and cause to be given, contributed, expended, and used said large sum of money in excess of the amounts permitted by the laws of the State of Michigan and the said Acts of Congress; the same to be money so unlawfully given, contributed, expended, and used by said Truman H. Newberry, and by him caused to be given, contributed, expended, and used as such candidate for the following and other purposes, objects, and things, to wit: * * * (Supp. Rec., pp. 1014–1015.)

This is followed by enumerating almost every imaginable purpose for which money can be used in a political campaign, and this enumeration is followed by averring numerous overt acts in the carrying out of the conspiracy.

HISTORY OF THE CASE IN THE COURT BELOW.

The defendants filed demurrers which raised the question whether the facts alleged constituted an offense under the laws of Congress and also challenged the constitutionality of the Corrupt Practices Act. The demurrers were overruled.

At the trial the defendants challenged the array of jurors and this was overruled. They then moved that the Government be required to furnish them with a list of the witnesses who had been examined before the grand jury and also those who would be called to testify on the trial. This was overruled. At the conclusion of the evidence, motions to direct verdicts were made and overruled. The verdict was as stated above.

STATEMENT OF THE RECORD SO FAR AS IT RELATES TO THE CHALLENGE TO THE ARRAY OF JURORS.

Since it is sought to predicate error upon the action of the court in overruling a challenge to the array of jurors, it is proper to state, at this point, just what the record shows on that subject. The bill of exceptions, at page 20 of the record, states that a challenge to the array was filed on January 27, 1920, and argued that day. The challenge itself is not made a part of the bill of exceptions nor incorporated therein. There appears, at page 975 of the printed record, an entry to the effect that the defendants, by their counsel, presented and placed on file a challenge to the array of jurors and that the same was considered and overruled. Beginning on the bottom of the same page there is printed what purports to be a "challenge to the array," under the title of this case. This, however, is not a part of the technical record, and, not being incorporated in the bill of exceptions, can not now be said to be a part of the record.

Moreover, if it was a part of the record, no proof was offered in support of any statement of fact made in it. In overruling the challenge, however, the court delivered an opinion, which is incorporated in the bill of exceptions, from which the following appears:

1. The names in the box from which the jury was drawn had been selected in the manner which had prevailed in the district for many years. The clerk and jury commissioner requested the county clerks, who were the custodians of the county jury lists, to furnish them lists containing the names of men eligible for jury service. Similar lists were requested of other men in position to give helpful information. Such lists were furnished and used in making the selection, but it does not appear what proportion of the names in the box had been on such lists.

2. In accordance with rules of the Department of Justice, it has been the custom to print on the back of the summons delivered to a juror a warning that, if he has a valid excuse for not serving, he must write to the judge and present his excuse or he will not be allowed compensation or mileage for attending if he is subsequently excused on any ground that might have been so presented. In this case the judge caused an additional warning to be added, to the effect that the juror must not permit anyone to talk with him about any pending case.

3. The judge also caused a questionnaire, with the request that it be filled out and returned, to be sent to each juror summoned. The questions submitted were intended to elicit information as to the juror's qualifications, his relations with the defendants, and as to whether any valid reason existed why he should not be required to serve. They included a question as to whether the juror had been active in the political campaign of 1918.

As the answers were received, the judge examined them, and if they showed that a juror was disqualified or had a valid excuse, he was excused and not required to obey the summons. Whenever a juror was thus excused, counsel for both sides were immediately notified of the fact and the reasons therefor, and no exception was then taken. Some were excused because employed in official positions or occupations which entitled them to exemption, some on account of extreme age, some on account of sickness of themselves or families, and some for business reasons. None was excused because of activity in the campaign, and none for any reason which was not a valid excuse under the Michigan law.

The Michigan law on this subject is found in Compiled Laws of Michigan, 1915, vol. 3, sections 12207, 12208, and 12614, as follows (pp. 4321, 4479):

> The following persons shall be exempt from service as jurors, to wit: All officers and employees of the United States; all officers and employees of the state of Michigan;

all county officers and their deputies; all judges of courts of record; all attorneys and counselors; all officers and teachers of colleges and incorporated academies; all settled ministers of the gospel; all superintendents, engineers, and conductors of any railroad; all constant ferrymen; all members of any legally organized fire department; all members of the Michigan national guard; all registered pharmacists; all practicing physicians, surgeons, and dentists; and all persons more than sixty-five years of age.

The court to which any person shall be returned as a juror, shall excuse such juror from serving at such court, whenever it shall appear:

1. That he is exempt from serving on juries by the provisions of the preceding section; or

2. That he is a justice of the peace, or executes any other civil office, the duties of which are, at the time, inconsistent with his attendance as a juror; or

3. That he is a teacher of any school, actually employed and serving as such; or

4. When for any other reason, the interests of the public, or of the individual juror, will be materially injured by such attendance, or his own health, or that of any member of his family requires his absence from such court.

It shall be a good cause of challenge to any juror, in any court of record in this state, in addition to the other causes of

challenge allowed by law, that such person has served as a juror upon the regular panel, or as talesman in such court at any time within one year previous to such challenge.

THE FACTS.

It is necessary to review the facts only for the purpose of determining whether, as alleged in the indictment and proven on the trial, they constitute an offense under the laws of the United States, and hence whether there was any error in overruling motions to direct verdicts in favor of defendants. In stating the facts, therefore, we may ignore conflicts in the evidence and content ourselves with stating facts which there is any material evidence to support. But it may be stated that, except as to some minor matters, the facts that will be stated were established without conflict in the evidence, and, indeed, most of the essential facts are established by the testimony of plaintiff in error King.

A United States Senator was to be elected in Michigan at the general election in November, 1918. Under the laws of Michigan candidates for that office, to be voted for at the general election, were to be nominated at a general primary election to be held August 27, 1918. At this primary election the candidates of both parties were to be chosen, and, under the provisions of the Michigan law, the same man could be a can-

didate for the nomination of both the democratic and republican parties.

The story, as detailed in the record, opens in December, 1917, when the plaintiff in error Frederick Cody, came to Washington to see J. G. Hayden, a citizen of Michigan and the Washington correspondent of a Detroit newspaper. Mr. Cody himself had lived for years in Michigan, but at that time was living principally in New York. According to his statement he came representing the plaintiff in error Truman H. Newberry, who was then a commander in the Navy, stationed at New York. Mr. Newberry was considering becoming a candidate for the republican nomination for United States Senator in Michigan. Whether the idea originated with him or was the result of solicitation on the part of friends in Michigan is immaterial.

Mr. Cody's visit to Washington was to secure, for Mr. Newberry, the services of Hayden as campaign manager. Newberry did not know Hayden, but had been referred to him by George Miller, the Washington correspondent of the Detroit News. Hayden indicated that he did not desire the proposed job, though it was suggested in the conversation that he might expect as much as $500 a month as compensation, and that it might be arranged to take care of him after the campaign. He did not agree, however, to accept and was urged to go to New York and see Newberry.

He did not agree to do this. But later he was called on the telephone by Cody, who explained that Newberry was tied up and could not come to Washington, and, in response to the request thus made, he went to New York on the following Sunday and had a conference with Cody and Newberry. This conference did not result in his agreeing to take a part in the campaign. Newberry at this time did not seem to have definitely decided to become a candidate, but was endeavoring to ascertain what his chances would be. In the course of the conversation, Hayden warned him against "a barrel campaign" as being both improper and unwise. Newberry said he agreed with this, and called attention to the fact that the Mitchell campaign in New York for mayor was an example of extraordinary and large expenditure of money. He also called attention to the fact that the Herrick campaign in Ohio was another example of the extraordinary and wasteful expenditure of money, remarking that Mr. Herrick's son carried the check book in that campaign and went around telling people that he was handling his father's check book and that the story had done Herrick more harm than his money could have done him good. It may be remarked, incidentally, that a different view of the wisdom of the Herrick campaign seemed later to have prevailed, for on March 8, 1918, the man who had then become manager of the Newberry campaign

wrote Newberry: "I am going to Cleveland tonight for the purpose of talking with the man who successfully managed Herrick's campaign for the senatorial nomination, under conditions very similar to ours, and I think I will be able to pick up some pointers." (Rec., p. 687.)

In discussing the probabilities of making a successful campaign, Hayden suggested the desirability of securing the services of Mayor Marx and Milton Oakman, who were, respectively, the heads of the city and county organizations in Detroit and Wayne County, Mich. Hayden persisted in declining to become connected with the campaign. About two weeks later, however, Mayor Marx and Mr. Robert Oakman, brother of Mr. Milton Oakman, came to New York and spent several days in conference with Newberry and Cody. While there, they had a long-distance conversation with Milton Oakman, who came to New York and joined the conference the next day. (Rec., pp. 73, 227.)

Hayden having declined to manage the campaign, the scene shifted to Detroit, and most of the rest of the story is told by plaintiff in error King.

In February, 1918, in a conference at the Hotel Statler in Detroit, King was urged by ex-State Senator George Scott and the plaintiffs in error Frederick Cody and A. A. Templeton to become the manager of the Newberry campaign for nomi-

nation. King seemed reluctant to undertake the work, but finally said that he wanted to consult with his wife and some friends, in whose judgment he had confidence, before giving a final answer. The result was that, in a few days, he reported that he was willing to manage the campaign, but, because of a difference of opinion that had arisen in a political convention some time before, he desired to confer with Commander Newberry himself before finally agreeing. It was accordingly arranged that he should go to New York for a conference with Newberry. He went and had a satisfactory conference with Newberry and Cody, the result of which was that, a little later, he agreed to undertake the management of the campaign. A most significant part of King's testimony is this:

> I think there was some general conversation about the expenses of the campaign at that time. I think Commander Newberry made a general inquiry as to what would be the expenses of a state-wide campaign, and I said that in the Townsend campaign that it had cost Senator Townsend's friends approximately $20,000 to meet the expense of that campaign, but on account of changed conditions in Michigan and throughout the state that it would cost his friends probably considerably more than that, possibly $50,000, to conduct the kind of a campaign, the Publicity Campaign, that would have to be conducted if it were to be successful; that Mr.

> Townsend had been very active in Michigan politics; had been a Congressman for a number of years; that he was very well known, while Commander Newberry had been a cabinet officer, he was not so well known in Michigan, and it would entail a greater degree of publicity and would probably for that reason cost more; that I did not know how much a campaign would cost, nobody could tell that; that if his friends decided to go ahead with his candidacy it would probably cost at least that much. (Rec., pp. 664–5.)

After his return to Detroit, King reported to plaintiff in error Templeton that he would accept the position of manager of the campaign and immediately went to work to perfect an organization. He rented offices for campaign headquarters. He proceeded with an elaborate organization, and employed a large force, involving the payment in salaries alone of sums which, before the date of the primary, would exceed $10,000.

Without attempting to state all the details of this organization, it may be said that plaintiff in error Emery became assistant secretary at a salary of $250 per month, which was later raised to $300. Plaintiff in error Hannibal A. Hopkins became publicity director at $500 per month. Templeton was known as general chairman. Plaintiff in error Floyd became secretary. Plaintiff in error McGregor became assistant secretary at $75 per week. Plaintiff in error Chilson became assistant secretary and was in charge of the

speaker's bureau. Plaintiff in error Harry O. Turner became assistant secretary and, together with Emery, was in charge of pay rolls and the office. In addition, Margaret Nevin and Mrs. Delamater and a number of others were employed as stenographers at $25 per week. William Calnon and T. P. Phillips and James B. Haskins were employed in the publicity department—Phillips at $100 per week and the other two at $75 per week. Others, too numerous to mention now, were employed at various salaries.

Of the plaintiffs in error not already mentioned, it may be stated that, in general, their connection with the matter was as follows: Roger M. Andrews had an important part in the organization throughout the campaign. As early as March 24, in company with King and Templeton, he visited Newberry in New York, his hotel bill being paid by Newberry. In February he had a conference with Templeton and Cody in Chicago. Later he had numerous conferences with King and telegraphic communication with Floyd and other members of the organization. He was practically in charge of the campaign in a part of the State and actively participated in numerous arrangements calling for the expenditure of much money.

Milton Oakman, although previously committed to the support of ex-Governor Osborn, was in the game almost from the beginning. As stated above,

he was in New York conferring with Cody, Newberry, Marx, and his brother, Robert Oakman, within a very short time of Hayden's visit to Newberry. During the campaign he was a part of the organization and in charge of the expensive campaign conducted in Wayne County; and there is evidence strongly tending to show that he was very handsomely compensated for his services—indeed, that the amount paid him very much exceeded $10,000.

Richard H. Fletcher, while not honored with any title, was an exceedingly active member of the organization and in close touch with King and the other officials of the committee. He participated actively in the expending of money and in various other activities which necessarily involved the expenditure of large sums.

Fred Henry was the chairman for Genesee County. He was in close touch with the details of the campaign, and his activities were much the same as those of Fletcher.

William J. Mickel was a democrat whose services were enlisted. He claimed to be dissatisfied with the efforts of the leaders to commit his party to the candidacy of Henry Ford. He seems to have been brought into the organization in connection with a scheme to have James W. Helme become a candidate for the democratic nomination against Henry Ford.

Mickel undertook this part of the work and finally, with the aid of King & Floyd, succeeded

in inducing Helme to become a candidate, his campaign to be financed by the Newberry organization. This financing was done through Mickel, who was exceedingly active. Having thus become a part of the organization, he engaged in many activities outside of the Helme candidacy, and was one of the men who actually disbursed considerable sums of money and made arrangements calling for other disbursements.

John S. Newberry became a most substantial part of the plan to conduct a campaign costing a large amount of money. He was in the Navy at the time and took no part in directing the details of the campaign. He was, however, the very backbone of the organization, for he contributed $99,500.

George S. Ladd was not a resident of Michigan. He resided in Massachusetts. He had previously been in Michigan and had done a good deal of campaigning in that State in the interest of good roads and similar enterprises in which farmers were particularly interested. He was asked to come to Michigan. When he arrived it was explained to him that he could be very helpful by making speeches in behalf of Newberry. The idea was for him to go to nonpartisan gatherings, make speeches on good roads and similar subjects, and in the course of his speeches give Newberry a boost. This he agreed to do and spent some four weeks campaigning in this manner

under the direction of the Newberry organization, returning frequently to headquarters for conferences and reports. He was paid $450.

King and the other members of the organization did their work thoroughly. With one or two exceptions every county in the State was organized and money was spent liberally in doing this. Paid advertisements were inserted in nearly every newspaper in Michigan at an enormous expense. Special efforts were made and much money expended to enlist the organized support of ex-soldiers, farmers, labor unions, fraternal organizations, and almost every other organization that could be supposed to exert any influence. Paid speakers were sent all over the State. Indeed, it is doubtful if as thorough, effective, and, incidentally, as *expensive* a campaign for a nomination was ever conducted in any State in the Union.

The amount expended is admitted to have been in the neighborhood of $200,000. The record is full of evidence from which the irresistible inference is that this was, in fact, a comparatively small part of what was actually expended. It was shown that the amount deposited in banks, at first to the credit of King, as chairman, and later to the credit of the Newberry senatorial committee, was not far from $200,000. The report of the contributions and expenditures which the committee made in compliance with the Michigan law itself showed total receipts $178,856.00, and total dis-

bursements $176,568.08. The evidence shows that much of the money actually expended was not included in this report, but, for the purposes of this statement, we may take the summary of these reported receipts and disbursements as set out on page 18 of the brief in behalf of the plaintiffs in error. The summary thus made by counsel is as follows:

Total receipts (and the report shows by name, date, and amount the source of every dollar)		$178,856.08
Total disbursements		176,568.08
(The report shows these items by name and amount. The disbursements are accounted for under the following subheadings:)		
For advertising and other publicity	$147,800.16	
Office expenses, including rent, furniture, light, and clerk hire	9,059.13	
Telephone, telegraph, and other charges	1,514.14	
Traveling expenses	9,104.52	
Copying of election registers and canvassing the voters	4,875.38	
Salaries and compensation not otherwise charged	4,143.75	
Total		176,568.08

In this statement of facts it has not been attempted to do more than give a general outline of the facts showing the connection of each of the plaintiffs in error with the conspiracy. In order to show, however, that there is ample evidence to support the general facts thus stated, there is attached to this brief, as an appendix, an abstract of so much of the testimony as relates to each of the plaintiffs in error.

QUESTIONS NOW INVOLVED.

The questions for the consideration of this court have arisen from the action of the District Judge in overruling a demurrer to the indictment, upon the ground that so much of the Act of Congress as applies to primary elections is unconstitutional and that the indictment does not charge an offense under the law; from his action in declining to direct verdicts in favor of defendants; and from his action in the admission and exclusion of evidence and in ruling on other questions raised at the trial.

The questions, grouped in two classes, are these, the first group including the following:

1. Does the indictment charge an offense under the laws of the United States?

2. Is the Corrupt Practices Act of Congress constitutional as applied to primary elections for the nomination of United States Senators?

3. Was there evidence upon which the case, as to the plaintiffs in error, should have been submitted to the jury?

The second group includes the following:

1. Was there error in overruling the challenge to the array of jurors?

2. Was there error in declining to require the Government to furnish a list of witnesses?

3. Was there error in either admitting or excluding evidence?

4. Was there error in the charge of the court?

BRIEF.

I.

Assuming that the corrupt practices act is constitutional, the indictment clearly and distinctly charges an offense under the laws of the United States.

The indictment charges a violation of section 37 of the Criminal Code, which is as follows:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

The offense which, it is charged, these parties conspired to commit was a violation of that part of the Corrupt Practices Act which deals with expenditures for the purpose of securing a nomination and election to the United States Senate. This offense is specifically described as—

> the offense on the part of said Truman H. Newberry of wilfully violating the Act of Congress * * * by giving, contributing, expending, and using, and by causing to be given, contributed, expended, and used, in procuring his nomination and election as such Senator at said primary and general elections, a sum, in the aggregate, in excess of the amount which he might lawfully give, contribute, expend, or use, or cause to

be given, contributed, expended, or used, for such purpose under the laws of said State of Michigan, to wit, the sum of one hundred thousand dollars, and by giving, contributing, expending, and using, and causing to be given, contributed, expended, and used, in procuring his nomination and election as such Senator, at said primary and general elections, a sum in the aggregate in excess of ten thousand dollars, to wit, said sum of one hundred thousand dollars, and on the part of said other defendants of aiding, counseling, inducing, and procuring said Truman H. Newberry so to give, contribute, expend, and use, and cause to be given, contributed, expended, and used, said large sum of money in excess of the amounts permitted by the laws of the State of Michigan and the said Acts of Congress. (Rec., pp. 1014–1015.)

The indictment then sets out the purposes for which the money so contributed was to be expended, but it is not now necessary to repeat these allegations.

It will be seen that the indictment first follows exactly the language of the statute in charging a conspiracy as the result of which Newberry was to contribute and use or cause to be contributed and used for the purpose of securing his nomination and election a sum in excess of the amount which it was lawful for him to contribute or use or cause to be contributed and used for that pur-

pose, and the other defendants were to aid, counsel, induce, and procure him to commit that offense.

The substantive offense charged is the conspiracy. The act which the parties conspired to do is described exactly as the offense denounced by the Corrupt Practices Act is described in that Act. That Act made it unlawful for Newberry to contribute or expend an amount in excess of $10,000, or of the amount which would be lawful under the laws of Michigan, or to cause such an amount to be contributed or expended. If Newberry did either of these things, he would violate the Act in question. If any of the other defendants aided, abetted, counseled, commanded, induced, or procured him to do so, they would be guilty under section 332 of the Criminal Code as principals in the offense. The indictment clearly charges that they did conspire together to bring about the result that Newberry, as the candidate, and the other defendants aiding and inducing him should expend or cause to be expended, for the purpose of securing Newberry's nomination and election, a sum in excess of that allowed by the law.

Assuming, therefore, that the Act of Congress is constitutional, it can scarcely be doubted that this indictment charges facts which, if proven, constitute an offense under the law.

II.

That the candidacy of Commander Newberry was launched with the distinct understanding and agreement between him and other of the plaintiffs in error that a fund of not less than $50,000 was to be raised and used for the purpose of securing his nomination and election is put, by the record, beyond all doubt.

That in the neighborhood of $200,000 was raised by men in close touch with Newberry, and constituting themselves the Newberry senatorial committee, and used by them for the purpose of securing his nomination, is not denied. That his candidacy was undertaken as the result of an understanding with some of the other plaintiffs in error that there would be raised and expended for this purpose at least $50,000 can not be seriously controverted. That such an understanding and agreement existed from the date of the conference in New York at which Newberry, Cody, and King were present, and as a result of which Newberry became an avowed candidate and King undertook the management of his campaign, will hardly be seriously questioned. Up to this time Newberry had been very carefully inquiring into the situation with a view to determining whether he could probably be nominated and elected. In this conference, he inquired what would be the probable expense of the kind of campaign that would be necessary in order to succeed. King had previously managed a similar campaign for

Senator Townsend and was in position to give reliable information. He gave this very frankly. Newberry was told that the Townsend campaign had cost $20,000, but that he could not expect to succeed without a more expensive campaign. It was explained that Townsend had been in Congress for a number of years and active in Michigan politics, and hence at the time of his candidacy for the Senate was well known politically all over the State, while Newberry was not well known. It was known, of course, that he had for a time been a member of the Cabinet, but he was practically unknown to the voters of Michigan, and, if he was to succeed as a candidate, steps must be taken to make the voters acquainted with him. King said that he could not state accurately what it would cost to do this, but that it would cost much more than was expended in the Townsend campaign, and probably as much as $50,000.

Newberry had explained that he was on duty as an officer of the Navy, and hence could not go to Michigan for the campaign and could not indulge in the usual activities of a candidate by making a personal canvass of the State. In other words, it was distinctly understood that if he became a candidate the campaign would have to be conducted in Michigan for him by the manager of his campaign and those who would become associated with the latter.

The men engaged in this conference were not novices. They were experienced business men and

politicians. When it was explained that the campaign which would be necessary would cost at least $50,000, they all knew that Newberry could not contribute any such sum without violating the law. They had reached the conclusion that he could not be nominated or elected without the expenditure of at least that much money. He was unwilling to become a candidate unless convinced that he had a reasonable chance to be elected. The raising and expending of $50,000 or more was, therefore, a condition without which, they all agreed, it would be useless for him to become a candidate and without which he was not willing to be a candidate. The result of the conference was that he became a candidate, and King, who had advised him how much money would be necessary if he were to manage the campaign, became campaign manager with the understanding that the necessary money would be forthcoming. In view of subsequent developments, the inference is irresistible that it was understood that this money would come—at least, nominally—from Newberry's friends, associates, and relatives. At any rate, it is perfectly clear that Newberry would not have been a candidate if it had not been arranged to raise and expend at least $50,000 to secure his nomination and election. It is entirely fair, therefore, to say that he became a candidate on condition and with the distinct understanding and agreement that the money necessary to conduct a campaign costing at least $50,000 would be contributed and used.

III.

Such an understanding and agreement as is described in the preceding paragraph amounts to a conspiracy participated in by Newberry, Cody, and King to contribute and expend, or cause to be contributed and expended, as much as $50,000 to secure the nomination and election of Newberry; that is, to violate the corrupt practices act.

The understanding or agreement described above, in the aspect most favorable to the plaintiffs in error, was an agreement on the part of Newberry to become a candidate, if King and Cody, and others associated with them, would go out and raise as much as $50,000 or whatever, in addition, should be necessary to be used for Newberry, and to use it for him in conducting the campaign which was believed to be necessary to secure his nomination and election. If section 8 of the statute had stopped with the statement that no candidate for Senator "shall give, contribute, expend, use, or promise" any sum in excess of the amount specified, the thing which was thus agreed to be done would have been a violation of the law on the part of Newberry, and those who aided or abetted him would be guilty with him as principals. But when Congress went further and prohibited such a candidate not only from doing these things but from *causing them to be done*, all possible question was removed.

When the Act is examined carefully, it is obvious that this last provision was inserted to

make it impossible to evade the spirit of the Act. Throughout the statute the candidate is treated as doing whatever is done for him by his agent or representative *or by any other person for and in his behalf with his knowledge and consent.* Thus, in the report which he is required to make of contributions to his campaign fund, he is required to include not only all moneys and things received by him personally but also any things received "by anyone for him with his knowledge and consent." Likewise, in reporting his disbursements, he is to include all disbursements made by himself "or by his agent, representative, or other person for and in his behalf with his knowledge and consent." (37 Stat., p. 27.)

Under the arrangement above described, it can not be doubted that when King and Cody left the conference in New York it was understood that they were to receive and, if necessary, solicit for Newberry the funds necessary to conduct a campaign which it was expected would cost as much as $50,000. Can it be doubted that when they solicited and received funds for this purpose they did so as the agent or representative of Newberry? If so, it certainly can not be doubted that they were persons who received these funds "for him with his knowledge and consent." He had, in effect, sent them out for the very purpose of receiving and expending moneys so raised. If, therefore, he complied with the Corrupt Practices

Act, it would be necessary for him to include in his own report the moneys collected and disbursed by these persons for him in conducting his campaign.

But, if this is not true, no one can deny that he *caused* the money which was raised and expended to be given, contributed, expended, and used, because it was upon the express condition that these things should be done that he became a candidate. If it is possible to use language which can not be misconstrued, this statute makes it unlawful for a candidate to cause money to be raised and expended by becoming a candidate only when it has been arranged that such money shall be raised and expended.

That no distinction is made between money which is contributed and expended by a candidate and that which is raised and expended as a result of an agreement with him or an understanding with him that it shall be raised is again made clear by the exception introduced into the statute by the proviso. It is there provided that the candidate need not include in his report of campaign expenses money expended to pay any assessment, fee, or charge made or levied upon candidates by the laws of the State or moneys expended for his necessary personal expenses "incurred for himself alone," for travel, subsistence, stationery, postage, writing, or printing (other than in newspapers) and distributing letters, circulars, and

posters and for telegraph and telephone service. The line of demarcation, therefore, is not between moneys contributed or received by the candidate in person and those which are contributed or received by some one for him with his knowledge and consent, but rather between such funds as are expended to defray the personal expenses of the candidate and those which are invested in a paid propaganda to promote his interests. If money is expended for the personal expenses specified, the candidate is not required to report it, whether drawn from his own funds or contributed to him by others. The reason is obvious. The purpose of Congress was to prevent extravagant expenditures in campaigns looking to the election of Senators and Representatives. Such expenditures, if sufficiently lavish, may easily, to all intents and purposes, practically result in purchasing a nomination or election, even though no money may be used for any purpose which is not ordinarily regarded as legitimate. No votes may actually be purchased at so much a vote; no election officers may be bribed, but, by the skillful placing of advertising, influences may be enlisted in ways which frequently fall little short of outright purchase. Money liberally paid for various kinds of services is, so far as actual results are concerned, often not very different from bribes.

At the same time, the actual personal expenses of a candidate making a thorough canvass of a

State may frequently reach a large amount. Congress had no purpose, and there was no reason why it should have, to curb the personal activities of a candidate which would make the voters acquainted with his personality. Such activities, in fact, tend to promote intelligent voting. By the proviso referred to above, therefore, it has been enacted that, for the personal expenses specified, a candidate may expend any amount of money that is necessary. He may become a candidate long before the election and give his undivided time to making a canvass. He may go into every civil district in the State and talk with and solicit the vote of every voter he can find. He may write a personal letter to every voter in the State, and repeat these letters as often as he deems necessary. He may personally use the telegraph and telephone for communication. The law does not require him to report the amount expended for any of these purposes. The proviso itself, however, contains an exception which is significant. He can not treat as personal expenses, within the meaning of the proviso, the cost of printed matter published in newspapers. This serves to emphasize the distinction to which attention is now to be called.

After leaving the candidate thus unlimited with respect to his personal expenses, Congress also recognized that the expenditure of some money for other purposes is necessary in carrying on any

campaign. It is legitimate to employ clerks, to rent offices for headquarters, to hire halls for public meetings, and even to publish announcements and advertisements in newspapers. Expenses of this kind, however, may easily be incurred to such an extent as to improperly influence the election. Therefore, Congress has enacted that there shall be a limit upon the amount that may be expended in the way of promoting a paid propaganda for a candidate, even though the separate items of expenditure be entirely legitimate.

A moment's consideration will show that this legislation was necessary, if the experiment of nominating candidates by primary elections is to be in any degree satisfactory. If a paid propaganda to an unlimited extent, or to the extent employed in this Michigan campaign, is permitted, then no man who is not willing to spend a fortune, or who can not enlist powerful influences willing to contribute a fortune, can scarcely expect to be successful in a primary if he has a rich opponent who is willing to spend all that is necessary for the purpose indirectly of subsidizing newspapers, paying for influence, and in other ways, through the use of money, arousing interest and influencing votes.

The understanding reached by Newberry, King, and Cody at the conference in New York was undoubtedly an agreement or conspiracy to cause to be done the very thing thus prohibited by the stat-

ute. Newberry became a candidate with the understanding that his candidacy was to be promoted by a paid propaganda and that Cody, King, and those who would be associated with them would act for Newberry in receiving and disbursing funds necessary to conduct such a propaganda or campaign as would cost not less than $50,000. That these facts abundantly justify the conviction of these three men would seem to be beyond all doubt.

That, at the conclusion of this New York conference, a conspiracy existed as a result of which Newberry and those conspiring with him and acting for him were to cause more money to be contributed and used to secure his nomination and election than the law allowed is clear. In substance, here is what occurred.

Newberry wanted to be Senator, but was unwilling to become a candidate unless convinced that he had a reasonable chance of success. He was advised by Cody and King that he could not be elected without a campaign to make him known to the voters. He was on active duty in the Navy and could not go to Michigan and make a personal canvass. Cody and King thought a successful campaign could be conducted for him, under the management of King, but advised him that it would cost certainly more than $20,000, and probably as much as $50,000. If it was not said at the conference, they all knew that Newberry could not contribute that amount without bringing him-

self within the very letter of the law. Hence, in referring to the proposed campaign, King spoke of what it will cost "your friends." When the conference was over, Newberry had agreed to become a candidate. King had agreed that he and those who would be associated with him would conduct a campaign costing probably $50,000, and they all understood that the necessary funds would be contributed by Newberry's friends and, if we may judge by what actually occurred, his close relatives and business associates.

It would be a quibble to say that, when Newberry became a candidate under these conditions and upon these terms, he did not cause to be contributed the money which was promptly contributed by his friends, relatives, and business associates, or that he did not cause those who received it for him to use it for the purpose of securing his nomination and election. And this is exactly what the indictment charges that he and the other plaintiffs in error conspired to do and in furtherance of which many overt acts were committed.

It has often been said that a conspiracy is something the existence of which can usually be shown only by circumstances. But here we have a conspiracy definitely and specifically proven out of the mouth of one of the chief conspirators, whose testimony leaves nothing to be supplied by inference.

IV.

For the purpose of accomplishing the object of the conspiracy—that is, the raising and expending the money necessary to conduct the expensive campaign contemplated—an elaborate organization was perfected. Every plaintiff in error who held a responsible place in this organization and became responsible for the raising or spending of funds became a party to the conspiracy.

It is not claimed, of course, that a mere understanding or agreement having for its object the nomination or election of Commander Newberry would be an unlawful conspiracy. The charge is that the agreement or understanding actually entered into was an unlawful conspiracy because its object was to secure this nomination and election through unlawful means—that is, the causing of an unlawful amount of money to be contributed and expended for that purpose. As shown above, there was clearly an agreement or understanding of this kind between Newberry, Cody, and King at the conference which was the beginning of the campaign conducted by King. This, however, was a continuing conspiracy and contemplated the bringing in of other parties. The things agreed to be done were to cover the intervening period of time between that date and the election, or, at least, the primary election. It is not alone the parties who originally enter into an unlawful conspiracy of this kind who are guilty. Those who later became parties to the agreement or understanding are equally guilty. This particular con-

spiracy contemplated an organization in which a number of men were to be banded together and engaged in the work of raising and expending funds for the purpose of conducting an expensive campaign on behalf of Newberry, with such cooperation and assistance as he could give from New York.

The organization, as actually perfected, was a most thorough and efficient one. No man holding a responsible position in it and actively participating in the work which called for the expenditure of large sums of money could fail to know that he was aiding in expending more money than the law allowed Newberry to cause to be expended for that purpose. The organization throughout the campaign was in close and constant touch with Newberry himself. Daily reports were sent to him detailing what was being done. From time to time he was advised of the names of men throughout the State with whom the organization desired him to communicate, and, for this purpose, letters were prepared at the Detroit headquarters for his signature and, at frequent intervals, sent to him, at New York, for signature and mailing, often in batches of 100 or more. Frequent trips were made to New York by those active in the campaign for conferences with him.

No man taking a direct part in the work of the organization could fail to know that the money which he was spending had been received and was

being expended for and in behalf of Newberry, and that this was being done as a result of an understanding with Newberry that these funds were to be furnished if he became a candidate. Every such man, therefore, knew that he was helping to carry out an arrangement which amounted to an unlawful conspiracy, through which Newberry was causing funds to be raised and expended in violation of the Corrupt Practices Act.

It is not claimed, of course, that the voluntary expenditure of money by any person for a purpose intended by him to aid in the election of Newberry, but not as the result of any arrangement or understanding with the latter or those acting for him, would make Newberry responsible for the expenditure or render the person making it a party to the conspiracy entered into by Newberry with the members of the organization resulting from the understanding which existed when he became a candidate. But certainly those who were identified in a managing or directing capacity with the organization, and those actively promoting its purposes, did become parties to the conspiracy.

For this reason the record fully sustains the conviction of the plaintiffs in error.

As we have seen, Newberry was a candidate whose candidacy resulted from the conspiracy itself. Cody was, from the beginning, Newberry's closest adviser and the chief promoter of the con-

spiracy in which he continued to be exceedingly active throughout the campaign. Templeton was general chairman. King was one of the original conspirators, the manager of the campaign, and its leading spirit, having the general direction of all expenditures. Floyd was the secretary, McGregor, Chilson, and Turner and Emery were assistant secretaries, and the two latter had charge of the pay rolls. Hopkins was publicity director, and under his direction enormous sums of money were expended. Andrews was active from the beginning, having been in conference with Newberry, King, and Templeton in New York as early as March 24. He was one of the chief advisers throughout the campaign, and practically had charge of the expensive campaign work in a section of the State. Oakman was in New York in conference with Newberry, Marx, and Robert Oakman shortly after the unsuccessful effort to induce Hayden to take charge of the campaign. He had previously been supporting ex-Governor Osborn, but became actively identified with the Newberry organization and had charge of the Wayne County department of the Newberry headquarters and directed the expensive campaign made in that county. Fletcher was one of the most active men in the organization and directed many matters calling for the expenditure of money. Henry was chairman of one of the county organizations and actively participated in the expenditure of money

for campaign purposes. Mickel, in addition to managing and directing the financing by the Newberry committee of the Helme candidacy, participated in numerous other activities calling for the expenditure of money. He was, in fact, a part of the organization. John S. Newberry, it is true, was in the Navy at the time and took no part in managing or directing the campaign. There were two parts, however, to the conspiracy: One was to consist in unlawfully raising and furnishing the funds and the other in unlawfully expending them. In the raising of the funds he played a most important part, for he furnished $99,900 in money for carrying out the conspiracy.

Assuming, as the proof clearly shows, that there was a conspiracy, as above outlined, there would seem to be no room for doubt that there is ample evidence to justify the conclusion of the jury that all these men were parties to it.

This leaves only the plaintiff in error, George S. Ladd. He was not a resident of Michigan. He resided in Massachusetts, but had a wide acquaintance and a supposed influence, particularly with farmers, in Michigan as a result of previous campaigns which he had made in the interest of good roads. He was sent for and asked to make speeches in Newberry's interest. He acceded to the request, and, under the direction of the Newberry committee, spent several weeks in campaigning, being frequently at the Detroit headquarters and in conference with the officials

of the Newberry committee. He was paid, as compensation or expenses, or both, $450. This furnished evidence from which the jury could properly conclude that he became a party to the conspiracy by actively participating in the carrying out of its purposes.

That the court may have before it, in more detail, the exact connection of each of the plaintiffs in error with the conspiracy, there is, as before stated, printed as an appendix to this brief an abstract of the evidence relating to each of them.

V.

The construction placed upon the statute by the court below.

The charge of the court below contains such an eminently fair and admirably clear exposition of the Corrupt Practices Act as to leave but little to be said to demonstrate its correctness. Indeed, when this part of the charge is quoted, it so plainly places upon the statute the only construction of which it is susceptible as to render argument unnecessary. We therefore quote it at length.

After setting out the provisions of the Act of Congress and the Michigan statute, which are directly involved, the court said:

> The words " give, contribute, expend, or use " as employed in this statute have their usual and ordinary significance, and mean furnish, pay out, disburse, employ, or make

> use of. The term "to cause to be expended, or used," as it is employed in this statute, means to occasion, to effect, to bring about, to produce the expenditure and use of money. (Rec. p. 940.)

A volume could be written without giving a more accurate definition of these terms, or one which a jury would more easily understand. The court proceeded to say:

> The prohibition contained in this statute against the expenditure and use of money by the candidate is not limited or confined to the expenditure and use of his own money. The prohibition is directed against the use and expenditure of excessive sums of money by the candidate from whatever source or from whomsoever those moneys may be derived. (Rec. p. 940.)

Surely, no one will question the correctness of this statement. The prohibition is expressly against the use of money and not against the means by which the candidate may have obtained it in order to use it. The charge continues:

> The phrase which constitutes the prohibition against the candidate "causing to be given, contributed, expended, or used excessive sums of money," is not limited and not confined to expenditures and use of money made directly and personally by himself. This prohibition extends to the expenditure and use of excessive sums of money in which the candidate actively participates, or assists, or advises, or directs,

> or induces, or procures. The prohibition extends not only to the expenditure and use of excessive sums of money by the candidate directly and personally, but to such use and expenditure through his agency, or procurement, or assistance. (Rec. p. 940.)

Unless no significance whatever is to be given to the expression "cause to be," this must be a correct statement of the law.

The court next proceeded to eliminate from the consideration of the jury those expenditures for which under the law the candidate would not be responsible by saying:

> To constitute a violation of this statute knowledge of the expenditure and use of excessive sums of money on the part of the candidate is not sufficient; neither is it sufficient to constitute a violation of this statute that the candidate merely acquiesces in such expenditures and use. But it is sufficient to constitute a violation of this statute if the candidate actively participates in doing the things which occasion such expenditures and use of money and so actively participates with knowledge that the money is being expended and used. (Rec. pp. 940–941.)

This construction relieves the candidate of all responsibility for expenditures to secure his nomination if made without his knowledge. It goes further and says that mere knowledge of the expenditure will not make him responsible, and

still further and declares that even mere acquiescence in the expenditure will not be sufficient to fix responsibility. Indeed, it holds the candidate responsible only when he furnishes the money or causes or procures it to be furnished, or participates in its expenditure by taking a part in the things which occasioned the expenditure. Obviously, the statute can not be construed to mean less than this.

After thus explaining the meaning of the statute, the court said:

> To apply these rules to this case: If you are satisfied from the evidence that the defendant, Truman H. Newberry, at or about the time that he became a candidate for United States Senator was informed and knew that his campaign for the nomination and election would require the expenditure and use of more money than is permitted by law and with such knowledge became a candidate, and thereafter by advice, by conduct, by his acts, by his direction, by his counsel, or by his procurement he actively participated and took part in the expenditure and use of an excessive sum of money, of an unlawful sum of money, you will be warranted in finding that he did violate this statute known as the Corrupt Practices Act.
>
> There is another Federal statute which is one of the sections of the criminal or penal code of the United States, which provides, in substance, that any person who aids,

counsels, induces, or procures another person to commit a crime shall be deemed guilty of the crime committed through his aid, counsel, inducement, or procurement. Hence, any person who knowingly and intentionally aids, counsels, induces, or procures a candidate for United States Senator to give, contribute, expend, or use, or to cause to be given, contributed, expended, or used in procuring his nomination and election an excessive and unlawful amount of money, is also guilty of violation of the Corrupt Practices Act, the act of Congress.

Applying this statute to the present case, if you are satisfied from the evidence in this case that the respondents other than the defendant Truman H. Newberry or some of them did in fact aid, assist, counsel, induce, or procure the defendant Truman H. Newberry to violate the Federal Corrupt Practices Act, you will be warranted in finding that they also were guilty of a violation of that Act.

There is another Federal statute, which is a part of the criminal or penal code of the United States, which provides, in substance, that if two or more persons shall conspire to commit an offense against the United States and one or more of such persons shall do an act to effect the object of such conspiracy, they shall be guilty of a crime.

These three laws or statutes—the Corrupt Practices Act; the statute making

it a crime for one person to aid, counsel, induce, or procure another to commit an offense; and the conspiracy statute—are involved in and controlling of the issues in the case.

So that the specific charge made against these respondents in the first count of this indictment, founded upon these three statutes, is that at some time or times between the 1st day of December, 1917, and the 5th day of November, 1918, these respondents were engaged in a conspiracy or unlawful agreement that the defendant Truman H. Newberry would give, contribute, expend, or use, or cause to be given, contributed, expended or used in procuring his nomination and election as United States Senator, a sum of money in the aggregate in excess of the amount authorized and permitted by the laws of the State of Michigan and the United States, and that the other defendants would aid, counsel, induce, or procure him so to do; and that one or more of the defendants committed certain acts to effect the object of that conspiracy. (Rec. pp. 941-942.)

VI.

Even if the issue had been whether Truman H. Newberry himself had furnished from his own means for campaign purposes a sum in excess of the amount allowed by law, there was sufficient evidence to take the case to the jury.

Much is said in the brief for plaintiffs in error on the assumption that Newberry himself furnished no money of his own for campaign pur-

poses. It is true that in the list of contributors as reported by the committee, his name does not appear. But, if it was necessary to show that any of his money, as distinguished from money contributed by others, was used, that fact, like any other fact, could be established by circumstantial evidence. At the beginning of the story, he was personally endeavoring to secure the services of Hayden as a campaign manager for a liberal compensation. There was apparently at that time no thought that this compensation would be paid by anybody other than Newberry. When a suitable manager was found the final arrangement under which the campaign was taken was made with Newberry himself. It is conclusively shown by the record that the amount of money reported by the committee as having been contributed and expended did not include, by several thousand dollars at least, the full amount expended. No effort was made to explain where this additional amount of money came from. The major part of the contributions, as reported, were credited to his brother and his close business associates. His brother is shown not to have been in Michigan during the campaign, and the money credited to him in the report was furnished by the Newberry estate, which managed and controlled large properties in which both of the brothers were interested. Both of them had private offices in connection with this estate. The money contributed to the campaign was charged

to the account of John S. Newberry, but there were abundant circumstances in the record from which a jury might fairly infer that this charge to him was subject to future adjustment between the brothers. Just before the close of the primary campaign we find the manager advising Truman H. Newberry by wire as to how much longer the expenses would be continued, a matter in which he was not interested if he was not furnishing the money. It is respectfully submitted that an examination of the record will show that if the question as to whether Newberry himself furnished a large part of the money used had been a material issue in the case, there was abundant evidence to take the case to the jury on that issue.

VII.

It is wholly immaterial whether Truman H. Newberry furnished from his own funds any of the money which was used in the campaign.

Practically the whole of the argument contained in the brief for plaintiffs in error, so far as it relates to the construction of the Corrupt Practices Act, is based on the assumption that because Truman H. Newberry himself did not furnish any of the money used he and the other plaintiffs in error can not be guilty of a conspiracy to violate that Act. The District Judge, however, was obviously right in ruling that it was wholly immaterial whether the money expended came directly from the candidate himself or was contributed by

others. The statute draws no distinction whatever between money contributed by the candidate himself and money contributed by others to or for him. There is one distinction running through the whole statute, but it is not this. It is based entirely upon the use made of the money and not upon the source from which it comes. It has been seen that, in making the report required of him by the Act of Congress, the candidate must include, along with the money furnished by himself, all money contributed either to him or to any one else for and on his behalf. He must, likewise, report expenditures made by any one for and on his behalf.

The statute, after providing a limit upon the amount of money used or caused to be used by the candidate, adds a proviso for the purpose of making an exception by providing that certain expenses of the candidate himself shall not be considered in determining whether the limit has been exceeded. The language is this:

> *Provided further*, That money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for

> telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expense, and need not be shown in the statements herein required to be filed. (37 Stat. c. 33, p. 28.)

Whether, therefore, any particular expenditure is to be considered in determining whether the limit has been exceeded depends wholly upon whether it is an expense incurred for the candidate himself alone, for the purposes specified in this proviso, and not, in any event, upon whether the candidate or some other person has furnished the money. In other words, to meet the expenses specified in the proviso, he may spend money without limit and may obtain it from any source he chooses. If he expends it for any other purpose, it must be included in fixing the limit, whether it was his own money or that of some one else.

VIII.

The limit placed upon the expenditures applies to expenditures made for and on behalf of a candidate as well as to expenditures directly by the candidate himself.

A lengthy argument is made to show that the purpose of the statute was to limit the amount which the candidate himself could contribute or expend, and not to place a limit upon the total amounts, raised by voluntary contributions, which could be expended. To sustain this contention,

however, it is necessary to wholly ignore the words "or cause to be," as used in the first sentence of that part of the statute which has been quoted above. The argument seems to be that because these words are not used in connection with the reference to the State laws, or in the two provisos, above quoted, the entire statute must be construed as limiting the expenditures made directly by the candidate and excluding such as he may cause to be made through others, because, it is said, the limit is to be measured by the State statute, which, in Michigan, refers only to expenses to be paid by the candidate. The Act will not bear such a construction. In the first sentence of the portion of it quoted, the expression, " shall give, contribute, expend, use, or promise " is followed by the definitive or qualifying expression " or cause to be given, contributed, expended, used, or promised." The word " or " is thus used in the explanatory sense in which it is frequently used, and the meaning of the two expressions together would be expressed thus: " give, contribute," etc.; that is, " cause to be given, contributed," etc. Having thus defined the words " give, contribute," etc., when first used, Congress, when it repeated them in the provisos and the reference to the State statute, of course, did not repeat the definition. The words are used throughout the section in the same sense in which they are defined in the first sentence. To put

upon them the construction contended for would be to ignore entirely a part of the language used.

However, even the construction contended for would not sustain the argument. Suppose it to be assumed that the limit fixed by the statute of Michigan includes only expenditures made directly by the candidate (and this is by no means conceded), it follows that Congress has not adopted this statute in full. The amount which it allows to be expended, even under this construction, would include all the personal expenses of the candidate, for no exception is made. The second proviso to the Act of Congress, which has been quoted above, excludes from consideration the major part of these personal expenses. And while it retains the amount fixed *by* the statute of Michigan, it permits the expenditure of that amount plus the amount of personal expenses specified in the proviso. Moreover, this limit is applied expressly by Congress both to amounts used and those caused to be used. The result would be, under the construction contended for, that the amount which a candidate either uses or causes to be used shall not exceed the amount which the Michigan statute says he may directly expend himself. This, upon the construction contended for, would include within the limit things which the Michigan statute did not include. If, however, the limit is made more stringent in this respect, it is liberalized to a much larger extent by the proviso which allows an expenditure without limit for nearly all the legitimate purposes for

which a candidate can spend money. Under any possible construction, then, a candidate who uses or causes to be used money in excess of the amount limited by the Michigan statute, in addition to personal expenses specified in the proviso, violates the Act of Congress.

IX.

History of the act on its passage through Congress.

As shown above, the Act of 1910 was purely an Act requiring publicity as to campaign contributions and expenditures, and did not undertake to place any limit upon such expenditures. The amendatory Act of 1911, as introduced in and passed by the House, did not attempt to do more than strengthen the provisions for publicity. It did not limit either contributions or expenditures. In fact, it was aimed alone at the defect in the original Act, which did not require a report of contributions and expenditures until after the election. It remedied this by requiring reports to be made both before and after the election. It did not, any more than the original Act, require a report of expenditures made in connection with primary elections or conventions. The discussion in the House showed a sentiment in favor of leaving these latter matters to State legislation. It followed the original Act in requiring reports from political committees, as therein defined, only when they sought to influence elections in more than one State. (47 Cong. Rec. Pt. 1, pp. 254, 265–

268.) In the Senate the amendment making the law apply to primary elections was first introduced by a committee report. It was the subject of much debate, but was finally adopted. (47 Cong. Rec. Pt. 3, p. 2312.) When the bill went back to the House, it was further amended so as to include nominating conventions and so as to except from the limit fixed the personal expenses of the candidate. (47 Cong. Rec. Pt. 4, p. 3286.) The Act as finally passed was framed by the conference committee and was, to some extent, a compromise between the views of the Senate and those of the House. (47 Cong. Rec. Pt. 4, pp. 3882–3883.) The debates show that the constitutionality of an Act applying to primary elections and nominating conventions was called in question. There was, however, no disagreement as to the meaning of the Act as it finally passed. It allowed expenditures for personal expenses, as specified in the proviso, without limit, and placed a limit upon all other expenditures made by or caused to be made by the candidate.

X.

It is said in behalf of plaintiffs in error that it was manifestly not the intention of Congress to fix a limit upon the total amount raised by voluntary contributions which could be expended in a campaign either for nomination or election.

This is true to an extent. The Act requires a report to be made by political committees, which are defined to be committees of political parties

seeking to influence congressional elections in more than one State, but no limit is placed upon the amount which such committees may expend. When, therefore, a candidate has been nominated, and a political committee, as thus defined, is seeking to promote his election, he is not held responsible for such funds as may be raised and expended by the committee. The only requirement is that, for publicity purposes, the committee shall make reports. Again, no report is required of a committee even of a political party seeking to promote the election of a candidate or candidates in a single State, nor are individuals, except the candidate himself, required to make such reports unless seeking to control the election in more than one State. After a candidate is nominated, therefore, the provisions limiting expenditures have a very restricted application. It is customary for committees of all political parties to take charge of the campaign for the election of their candidates. The Act places no limit upon the amount which they can thus spend. They may raise as much money as they choose, and, so far as this law is concerned, may spend it for any purpose they choose. The only restriction is that, if they are seeking to influence the election in more than one State, they must make reports. Otherwise they are without restrictions from this law.

The Act then applies to the candidate and says to him, It is to be assumed that the political committee of your party will take care of the general

expenses of the campaign, but it is entirely proper and desirable that the people should have every opportunity of judging of your qualifications for the office which you seek, and hence you may spend, without limit, money for the purpose of giving them this opportunity, the only restriction being that the amounts you spend or cause to be spent shall be limited to your personal expenses. If the Act stopped here, it would not be a very stringent or oppressive law, but it goes further and recognizes that the legitimate expenses of the campaign, outside of the candidate's personal expenses, may not be provided by a political committee, and hence it says to the candidate, in addition to your personal expenses, you may also spend or cause to be spent for other campaign purposes the amount which the laws of your State would permit you to expend for all purposes, including personal expenses, provided it does not exceed $10,000. In the present case it will be seen that the law is very much more liberal than the law of Michigan, which makes no exception as to the expenses that must be included in the amount limited.

It is also said that this statute bears upon the candidate, and that it must not be regarded as intended to encroach upon the freedom of citizens to support a candidate by voluntary contributions and to have the moneys thus contributed legitimately expended in his behalf. This is true.

Except in the case where an individual contributes money for the purpose of influencing elections in more than one State, he is not even required to make a report. There are no prohibitions in the Act directed against the individual citizen or voter and no penalties imposed for anything he may do. He is entirely free, so far as this Act is concerned, to do anything he chooses to promote the election of any candidate whom he desires to support. But, free as he is, it does not follow that the candidate who causes or induces him to furnish money for campaign purposes is not guilty of an offense under this Act.

The charge of the court makes it perfectly plain that the candidate does not become responsible for the contributions or use of any money whatever by any person who acts of his own accord and independently of the candidates. The District Judge very carefully limited the candidate's responsibility to the raising or using of funds which he has caused or induced to be contributed and used. He went further and instructed the jury that knowledge on the part of the candidate that money was being raised and used in support of his candidacy, or even acquiescence in such expenditure, would not make him an offender against the law. There is nothing in the Act, as construed by the trial judge, which in any way encroaches upon the right of the individual voter to do what he pleases in support of any candidate.

It is only when the candidate participates in causing to be done the things which the Act prohibits him to do that the jury was told he would be guilty.

In the case of primary elections, which are contests within a party, the political committees of the various parties are not supposed to aid or promote the candidacy of either party. It was when the application of the law was extended to primary elections and nominating conventions that the proviso permitting personal expenses without limit to be incurred was introduced. The reason is obvious. A candidate in a primary, not having a political party or political committee behind him, must himself bear the expenses which, in the case of a nominated candidate, are usually borne by the party itself, and hence the candidate was allowed to pay his personal expenses, and, in addition, to cause to be used an additional sum for campaign purposes not in excess of the amount which the State law would permit him to use for all purposes.

It may also be said that the limitation in the first proviso as to the amount which a candidate may give, contribute, expend, use, or promise has the result, in the case of a candidate who has been nominated, of limiting the amount which he may contribute to the political committee managing his campaign. He is permitted to pay his personal expenses as specified in the second proviso, and, in

addition, he may contribute to his political committee an amount not in excess of the amount which the laws of the State permit him to spend for all purposes. We can not agree, however, to the statement of counsel that—

> Of course Congress had not the slightest notion that these amounts would be a proper limit of all contributions and expenditures that might be made in such campaigns, and hence Congress in its proviso expressly fixed these amounts as those which the "candidate" might "give, contribute, expend, use, or promise." The limit in the proviso of the Federal statute is obviously a limit of the amount which may be contributed, expended, or promised by the candidate himself, and has no reference to the expenditures of moneys voluntarily contributed by others. (Brief, pp. 71–72.)

This denies all significance to the words "or cause to be" in the first sentence quoted above. Moreover, it is in no sense a sound proposition unless it be understood that moneys which a candidate has induced or caused another to contribute are not voluntarily contributed by such others. The theory of counsel seems to be that Congress was concerned, in passing this Act, to see that expenditures as they have customarily been made in political campaigns should not be curbed or restricted. On the contrary, the purpose was to place restrictions and limitations upon these very things. It has generally been supposed that, if

money is to be expended in a campaign, it is desirable that it shall be furnished by the candidate himself, who will thus be free from campaign obligations, rather than that it be procured from powerful interests, who may desire a return in the way of legislation. If, therefore, as insisted in the brief, the sole result of this Act is to place a limitation upon the amount which the candidate himself may spend, but to leave him free to accept, or to have accepted for him, contributions from others without limit, and to have these used for the purpose of securing his election, the passage of the Act was an idle ceremony. It is submitted that no such construction can be put upon the Act without doing violence to both its letter and its spirit.

XI.

The statute as construed by the court below does not have the sweeping effect ascribed to it in the brief for plaintiffs in error.

Complaint is made of that part of the charge in which the judge said:

> But it is sufficient to constitute a violation of this statute if the candidate actively participates in doing the things which occasion such expenditures and use of money and so actively participates with knowledge that the money is being expended and used. (Rec. pp. 940-941.)

It is said that actively participating in doing the things which occasioned such expenditures is nothing more than a roundabout way of describing

campaigning. A number of illustrations are used in support of the contention that Congress could not have intended the Act to be so sweeping. But the Act as construed by the learned District Judge does not have the effect imputed to it. It must be remembered that the judge distinctly told the jury that mere knowledge of or acquiescence in expenditures on the part of a candidate would not make him guilty under the Act. Counsel say that if he speaks he must speak in halls that must be hired, and the expenditure for these halls alone may exceed the limit assigned to him by the statute for his personal outlay. It is true that the hiring of halls for the purpose of making speeches is not one of the things which the proviso permits the candidate to do without including the expense in the total which he is permitted to spend or cause to be spent.

It may be assumed, therefore, that if the candidate himself hires a hall, or procures some one to hire it for him, this would be an expense caused by him and for which he must account in determining whether he has exceeded the limit allowed. But the judge told the jury that mere acquiescence in expenditures of this kind would not make the candidate responsible. There is no reason, therefore, under this instruction why the voters or his friends in a particular town should not hire a hall and invite him to speak in it. He would then be participating in the *campaign*, of course,

but it was never intended that he should not do this. He would not be actively participating in the *hiring of the hall*, the thing occasioning the expenditure, but, at most, would be merely acquiescing in it, and therefore the expense would not be included in the amount for which he must account. After he has been nominated, the political committee in charge of his campaign may spend any amount it chooses to hire halls for this purpose. Before his nomination he must account for such expenditures only when he has himself caused the halls to be hired and not when he has merely acquiesced in the wish of the voters that he speak in halls voluntarily hired by them. The case used as an illustration, therefore, does not come at all within the rule laid down by the trial judge.

Again, it is said that mailing is an expensive matter and that it costs a large sum to put one circular in the hands of every voter throughout the State. It is then said that if the candidate wrote a speech and gave it to his committee to circulate, knowing that the expense of mailing the speech to the voters would exceed the amount limited by the statute, he would, under the instruction of the District Judge, be guilty of a crime. But, among his personal expenses enumerated, as to which there is no limit, are included stationery, postage, writing or printing (other than in newspapers), and distributing letters, circulars, and

posters. If, therefore, a candidate desires that his speech shall be distributed among the voters of the State he has the right to have it printed and mailed to every such voter and not one cent of the cost is to be taken into account in determining whether he has exceeded the limit allowed. He may expend, without limit, the amount necessary for the printing, for writing the post-office addresses of the voters, for the postage, and for depositing the speeches in the post offices. It is not expected, of course, that he shall personally write out the speech or the post-office addresses any more than that he shall personally do the printing. What he is allowed to do is to pay the cost of having these things done. Hence, the illustration used is not in point, because under the rule laid down by the trial court no offense would be committed. It may be merely said in passing, however, that in allowing him to pay for the cost of printing one exception was made—that is, for printing in newspapers. And in this case many times the amount fixed by the statute was expended for printing advertisements and other matter in newspapers. If, in the expenditure of money for this purpose and for other purposes not included by the proviso under the head of the candidate's personal expenses, the candidate himself advised how it should be expended, assisted in its expenditure, or procured its expenditure, he was within the terms of the statute if the language

employed is to be given any effective meaning at all, and it is only under these conditions that the District Judge instructed the jury that the plaintiffs in error would be guilty.

XII.

The conviction must be sustained unless the act of Congress upon which it is based is unconstitutional, or unless some reversible error, with respect to matters not yet mentioned, was committed on the trial.

It is apparent, we think, that the court below properly construed the statute, and that under his construction there was ample evidence to support a conviction in this case. There remain two inquiries: (1) Is the Corrupt Practices Act, as applied to a candidate in a primary election, constitutional; (2) was there any reversible error committed by the trial judge at the trial.

XIII.

The primary election or nominating convention is now a part of the established process or manner of holding elections in practically all the States.

The present system of holding elections in the various States has been one of gradual development. Originally, it was a very simple matter. The voter went to the polls and deposited a ballot on which were written or printed the names of the candidates for whom he voted. Within the recollection of many of us still living, he was very generally permitted to do this without being required to

register prior to the day of the election. Very generally, however, registration in advance of the election is now required, so that it may be known before election day who is entitled to vote. This is merely a method adopted to safeguard the election. If a man is not registered, he can not vote. If he has registered, time elapses between the registration and the election in which those interested may ascertain whether he is a legal voter and was entitled to register; and, if not, his vote may be challenged, or, if the fraud is not discovered until after the election, he may be prosecuted. In the old days the voter could be accompanied by those who sought his vote to the ballot box itself. The purchase of votes was easy because, as a condition of the purchase, the purchaser could require an open ballot to be voted and could see it put in the ballot box.

As another safeguard of the election, modern laws in most of the States provide for a secret ballot. The voter goes into a booth alone, and marks his ballot, and deposits it, folded, in the ballot box. This makes the purchase of votes difficult, because the purchaser can not be assured that the voter votes as he has agreed to vote. Under the system now in vogue in most of the States the voter can not furnish his own ballot. It is furnished to him by the election officer, with the names of all candidates printed on it, and he marks those for whom he desires to vote. He can not vote any

other ballot than that furnished him. The most important part of the modern method or manner of voting, therefore, consists of the manner in which names are printed on the official ballot, or the method by which one can have his name so printed. This has from the beginning, both in the States and the Federal Government, been generally a government by political parties—that is, in most elections the members of each political party select in some way their candidates. When it comes to the election, it is usually simply a choice between the candidates so selected. In quite a number of the States one of the political parties is so completely dominant that a nomination by that party is equivalent to an election. In these States no matter how stringent the regulations governing the election or how fair the election itself may be, but little is accomplished in the way of honest elections if the nominations are secured through fraud, corruption, or other improper means. In such States, where the will of the people is thwarted through corrupt means, the corruption is necessarily in the securing of nominations. If these have been unfairly or improperly secured, it can not be said in any practical sense that there has been a fair or honest election. But since most candidates are named in some way by political parties, when the legislatures of the various States came to the conclusion that one of the proper ways of conduct-

ing an election was to provide an official ballot with the names of candidates printed on it, it was natural to provide that the names of persons nominated by political parties should be printed on the ballot, and this method has been very generally adopted. Having done this, the legislatures have made the nomination of candidates a part of the general process of conducting elections.

The next and natural step was to undertake, by legislation, to see that these nominations themselves should be fair and free from corruption. This was necessary if the integrity of elections themselves was to be protected. Hence, we find that most if not all the States have now adopted general laws requiring that nominations shall be made at legalized primary elections. The regulations governing these primaries are framed much like the regulations governing general elections. Offenses against the primary law are punished in the same way as offenses against registration laws or the laws governing the general elections. The result is that if any intelligent man should be asked to-day in what manner Senators and Representatives are elected in his State he would say that a primary election under regulations provided by the laws of the State is first held at which the various political parties nominate or select their candidates; that the names of the candidates so selected are printed on the official ballot, which, on the day of the general election, is furnished to and

voted by every legal voter who has previously registered in accordance with the law and who desires to vote. In other words, in the development of the system of election laws—at least, in most of the States—it has come about that the nomination of candidates is as much a part of the manner of holding elections as is the registration of voters in advance of election day. It is so understood in common parlance and it is so recognized by the laws of the various States.

XIV.

A Senator being an officer of the United States holding an office created by the Constitution and constituting a part of the Federal Government, all matters relating to his election belong to the Government of the United States, which has the same power over them that the States have over matters relating to the election of State officers, unless restricted by the Constitution itself.

It is assumed in the argument in behalf of the plaintiffs in error that the only power which Congress has over the election of Senators and Representatives is derived from Article I, Section 4, of the Constitution, relating to the times, places, and manner of holding such elections. This is by no means true. That section, on the contrary, contains only a grant of power to the States to be exercised subject to the control of Congress, in the exercise of a power which would be its, even if this section was not in the Constitution.

The Government of the United States is not a confederation of States. It is a government or-

dained by the people of the United States and, within the sphere of its powers, wholly independent of the State governments. A Senator or a Representative in Congress holds an office which was created by the Constitution. He is chosen not by the States but by that portion of the people of the United States who reside in the State in which he is elected. He is an officer not of any State but of the Federal Government. (*Lamar* v. *United States*, 241 U. S. 103, 112.) Unless, therefore, the Constitution itself indicates a contrary intention, his election is a matter which concerns only the Federal Government and in no way a State government. It would certainly be an anomaly if one government had the unrestricted power to control matters affecting the choice of the officers of another and entirely independent government. Control of matters relating to the selection of those who are to function as a part of a particular government would seem necessarily to inhere in that government itself. In his powerful opinion *In Ex parte Yarbrough* (110 U. S. 651), Mr. Justice Miller said, at page 657:

> That a government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly, has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposi-

tion so startling as to arrest attention and demand the gravest consideration.

If this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption.

In Article I, Section 2, of the Constitution, it is provided that:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 3 of the same Article provides that:

> The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

This latter section was changed by the Seventeenth Amendment to read as follows:

> The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

Thus, a Senator or Representative is chosen by that portion of the people of the United States residing in the State or district in which he is elected. When elected, he is the representative in the Federal Government of these people and performs no function in connection with State governments. It is true that the Constitution fixes the qualification of voters by reference to State laws. This does not mean, however, that the voter derives his right to vote from the State rather than from the Constitution of the United States. Mr. Justice Miller, in *Ex parte Yarbrough, supra*, at page 663, said:

> The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress.
>
> It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

At the time the Constitution was adopted there was, of course, no Government of the United States and no Federal law providing for the election of Members of Congress. It was necessary, therefore, that the Constitution itself should direct in what way the people of the various States should elect the first Congress. If, however, it had provided for the election of the first Congress and been silent as to future elections, it could scarcely be doubted that it would have, without any further provision of the Constitution, been left to Congress to make all necessary regulations for the election by the people of succeeding Congresses. This would undoubtedly have followed from the power conferred upon Congress in Article I, Section 8, as follows:

> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

It would seem clear, therefore, that Congress must have exclusive power, under the Constitution, over all matters relating to the election of Senators and Representatives, unless something can be found in the Constitution itself which restricts the exercise of that power, and that this is the same power which the States have over matters relating to the election of State officers.

XV.

Whatever power the States have over matters relating to the election of Federal officers is not one of its reserved powers but is a power expressly conferred by the Constitution.

We are accustomed to say that all powers not delegated to the Federal Government are reserved to the States or to the people. From what has been said above, however, it is obvious that the power to exercise any control over matters relating to the election of Senators and Representatives is not one of the reserved powers of the States. In the very nature of things, it could not be. The States could not reserve a power which they never had. With respect to governmental powers, to be exercised within their own borders, they had the fullest powers of Government. So far as these powers were not taken away from them by the people of the United States and delegated to the Federal Government, they remained in or were reserved to them. But the powers which they possessed were the powers incident to their own government and not those which affected other governments. The power, therefore, to choose or to regulate the election of Senators and Representatives who were to become a part of a new and independent government had never been in them and can not be said to have been reserved to them by any general clause of the Constitution or any of the amendments thereof.

The States, as States, manifestly can have no part in the new government that was created unless expressly given some function to perform or some power to exert in connection with that government. This could be done only by the Constitution of the United States itself. It follows that any power which a State has over matters relating to the election of Federal officers is not one of its reserved powers, but must be found as a power expressly delegated by the Constitution.

XVI.

The only power conferred on the States by the Constitution over matters relating to the election of Senators and Representatives is expressly made subordinate to the power of Congress over the same matter.

This brings us to Article I, Section 4, of the Constitution, which is as follows:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

And the Seventeenth Amendment makes the same provision with respect to Senators.

It can not be said that there is anything else in the Constitution which can be construed as conferring any power whatever upon the States to control matters relating to the choosing or election of Senators and Representatives. As seen above

when the Constitution was adopted, there was, of course, no Federal machinery for holding elections. It was, therefore, necessary to provide in some way for the election of the first Congress. The various States had systems of election under which they chose their own officers. The obvious plan was to take advantage of the election machinery which was thus already in existence in order to start the new Federal Government. In effect, what was done by Section 4 was to provide that the first Congress should be elected through the use of the election machinery of the various States, and that this method of electing Congressmen should continue, except as Congress might, from time to time, see fit to alter it or to supplant it with election machinery of its own. If, therefore, the power to make regulations relating to primary elections is included in the power to prescribe the manner of holding elections, the exercise of this power is subject to the control of Congress. Whatever power the States may exert over Congressional or Senatorial primaries, in the absence of action by Congress, may be exerted under the express provision of Section 4 by Congress whenever deemed necessary.

On the other hand, if, as insisted by counsel, the power to prescribe the manner of holding elections does not include any power over primary elections, it follows that the States have no power whatever to exert any control over senatorial or congressional primary elections.

XVII.

If Congress has no power to make regulations of the kind now involved, neither have States, and there is no power anywhere which can control and prevent excessive expenditures by candidates for senatorial or congressional nominations.

If we accept the contention that the power to prescribe the manner of holding elections does not include the power to regulate primary elections, then, as we have seen, the Constitution confers upon the States no power to regulate congressional and senatorial primaries, or even to punish corruption in connection with such primaries, and no such power exists in the States. If we also accept the further contention of counsel that Congress has no power to regulate such primary elections unless conferred by Article I, Section 4, no such power exists in Congress. The result would be that there is no power anywhere to exert any control over the expenditures of candidates for senatorial or congressional nominations. It is true that, under the method of choosing officers in this country, a nomination secured by fraud, corruption, or other improper means inevitably taints the election which follows and makes it impossible that the result of the election shall be fair and honest. A nomination which is bought, and results in the election of the nominee, puts into office a man who has secured his election to that office by the corrupt use of money just as surely as if he had purchased enough votes at the general election to secure his election. By the

terms of the election laws themselves, nominations determine whose names shall go on the official ballot which is furnished every voter. True, there may be provisions in the law under which a man who has not been nominated may be entitled to have his name printed on the ballot. It is frequently provided that this may be done upon a petition by a given number of voters, but it is a rare case, indeed, that any person whose name goes on the ballot in this way, along with those who have been regularly nominated, is elected. Even in such cases the signing of the petition practically amounts to a nomination. Under the contention now made, neither the State government nor the Federal Government could make it a crime for a candidate to hire enough voters to sign his petition to get his name on the ballot.

Practically, and to all intents and purposes in many States, the most important and decisive act in the choosing of officers is the nomination. And yet we are told that when it comes to choosing Members of Congress both the State government and the Federal Government are so impotent that they can not protect the elections, upon the purity and fairness of which the existence of the Nation itself depends, against this particular species of fraud and corruption by which elections are actually controlled. This does not overstate the argument. For, as we have seen, if Congress must find its power in Section 4, and if that section does not confer any power over matters relating to pri-

mary elections, then there is no power anywhere to prevent the kind of corruption referred to. Surely, such a conclusion will not be reached unless clearly and unavoidably required by the Constitution. The securing of a nomination, and thereby an election, as United States Senator by the use of $200,000 or more in any State is a scandal and a disgrace. That such conduct is beyond all governmental control or punishment ought not to be held, except under the sternest necessity of Constitutional law.

XVIII.

The States undoubtedly have the power to regulate primary elections for the selection of candidates for State offices, because such regulations are necessary to protect the integrity of elections themselves. For the same reason Congress has the power to regulate primary elections for choosing candidates for Federal offices.

The reproach and danger to republican institutions sure to come from the excessive use of money in elections have become so generally recognized that most of the States have adopted corrupt practices acts for the purpose of preventing it. It has been so obvious that this evil is as potent and as dangerous in connection with securing nominations as in controlling final elections that these laws have very generally been extended to primary elections and nominating conventions. These laws are primarily enacted, of course, for the purpose of regulating the election of State and local officers.

They have been applied to congressional and senatorial nominations and elections incidentally and only because of the provision of the Constitution that, in the absence of Federal regulation, the manner of holding these elections shall be as prescribed by State law. The power of the States to adopt such laws with respect to their own elections is undoubted. It is inherent in the right of self-preservation. A government that has not all the power necessary to enact such measures as will protect its elections from fraud or corruption exerted directly or indirectly is too impotent to be called a republic. In the matter of protecting its elections, the Federal Government has all the implied or inherent power of any government. We have seen that no power over such elections has been given to States which is not coupled with a provision that such power shall be subordinate to the will of Congress. We have also seen that Article I, Section 4, is not so much an express conferring of this power as it is a special provision for the exertion of that power with respect to certain matters. The Federal Government, therefore, has, independent of Section 4 and unrestricted by it, all the power to protect and keep pure its elections that the State governments have to protect and keep pure theirs. Unless, then, counsel are able to push their argument to its logical conclusion and urge that no State government has the power to regulate primary elections for the choosing of candidates for State offices,

their argument against a like power in Congress over primaries for the selection of candidates for Federal offices is without foundation.

XIX.

Ample authority to sustain this legislation is found in Article I, section 4, of the Constitution.

We have shown, we think, that Congress had the necessary power to enact this legislation independent of Article I, Section 4. We now propose to show that even if the necessary power must be derived from that section, and even if the word "elections" as there used is not construed as including primary elections, the law is still constitutional.

Like every other provision of the Constitution conferring power upon Congress or the Federal Government, this section must be read in connection with the last clause of Article I, Section 8, which confers upon Congress the power—

> To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

We have, then, an express provision that Congress may enact all laws which may be necessary to carry into effect the power conferred upon it to prescribe the manner of holding elections for Senators and Representatives, or to alter any regulations made on that subject by the States.

The learned trial judge in his opinion overruling the demurrer in this case has admirably stated the effect of Article I, Section 4. He said:

> Upon this branch of the case it is further and finally urged that, whatever may be the right of Congress to regulate general elections, it can not extend its authority to the control of conventions or primary elections for the nomination of party candidates for the office of United States Senator. Again, why not? Can it be possible that Congress may protect the political stream from pollution in its lower reaches but is helpless to prevent the dumping of filth and poison into the spring at its source? It has been definitely settled that Congress may reach back of the general election to the registration of voters for that election. But the registration of voters is not as essential to the election as the nomination of candidates. An election may be held without registration, but not without candidates. Theoretically, perhaps, an election without previous nominations is possible, but, practically, it is impossible. Theoretically, also, a man may be elected to the United States Senate without having been previously nominated for that position, but, in fact, he can not. The law deals with practical realities and not with theoretical impossibilities. In actual practice, the nomination of candidates for public office is as essential to an election as are

polling places, ballots, ballot boxes, and inspectors. It is no longer open to dispute that Congress may protect and control the latter; by the same reasoning, why not the former? It is common knowledge, and, therefore, not to be blindly ignored by courts, that, in a majority of the States of the Union, under normal conditions, the nomination for the office of United States Senator by the dominant political party is, in fact, the election, and that the subsequent ratification at the polls is little, if any, more than mere formality. In every State the nomination is a necessary prerequisite to the election.

It must be remembered that the Constitution grants to Congress, in express terms, the power to regulate the manner of holding elections for its own members and also grants to the same branch of the Government, in like express terms, the further power to make all laws necessary and proper for carrying into execution the first-named power. * * * No exact definition of the word "election," which will meet all requirements, under all circumstances and conditions, is possible. Its meaning, when used in state constitution or statute, of course, will depend in a large measure upon context and the purpose to be served. To hold that the phrase of the Federal Constitution "Manner of holding elections for Senators and Representatives," includes not only the election itself, as a whole, but also the means and processes

> which may be employed in the election accords with both reason and controlling precedent. A primary election may not, in and of itself, be an election within the technical meaning of that term as used in the Constitution, but that, when employed, it is a necessary step in the process of the election can not be successfully denied; nor can it be denied that the regulation of the nominating or primary election has an important and direct bearing upon, and may be an essential part of, the regulation of the general election itself. (Rec., 15–17.)

This clear and convincing statement of the law is amply supported by decisions of this court.

It is said that until the passage of this Act Congress had never attempted to exercise any power over primary elections or nominating conventions. It is equally true that, until within recent years, no State had seen fit to enact statues for the purpose of throwing safeguards around nominating conventions or primary elections. It is also true that for a great many years after the Government was established Congress did not see fit to make any regulations relating to general elections themselves. In none of these cases, however, did the failure to act argue a want of power. When Congress did, after the Civil War, deem it necessary to enact regulations applicable to congressional elections, to prevent interference with the newly enfranchised negroes in their right to vote, and this same suggestion was made, this

court answered it in *Ex parte Siebold*, 100 U. S. 371, 388, by saying:

> If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not been deemed sufficient to require it, and not because Congress had not the requisite power.

It is admitted that Congress has always had much more power over general elections for Members of Congress than it has even yet seen fit to exert. It might, if it had seen fit, in the beginning have required that congressional elections be entirely separated from State and local elections and held under regulations prescribed by an Act of Congress and by officers selected pursuant to such an Act. Even when it determined to leave the manner of holding these elections to be as prescribed by State laws, it might still have required that they be held on days on which State and local elections were not held. When it did not require this, it left the States free to hold State elections contemporaneously with congressional elections if they saw fit. The result is that State and congressional elections are usually held on the same day and by the same officers of elections. If, however, a State chooses to do this, the congressional elections must be held in accord with any regulations which Congress has seen fit

to prescribe. And it can not be said that these regulations encroach upon the rights of the States by thus applying to State elections. This was made clear in *Ex parte Siebold*, *supra*, at page 393, where it was said:

> In what we have said, it must be remembered that we are dealing only with the subject of elections of representatives to Congress. If for its own convenience a State sees fit to elect State and county officers at the same time and in conjunction with the election of representatives, Congress will not be thereby deprived of the right to make regulations in reference to the latter. We do not mean to say, however, that for any acts of the officers of election, having exclusive reference to the election of State or county officers, they will be amenable to Federal jurisdiction; nor do we understand that the enactments of Congress now under consideration have any application to such acts.

Prior to the passage of the laws under consideration in the *Siebold* case, Congress had, perhaps, deemed it necessary to exercise its power under Section 4 only twice, and then, in effect, only to make alterations in the manner of holding elections as prescribed by State law. In our early history, some of the State laws provided that the whole number of Congressmen to which a State was entitled should be voted for throughout the State. To correct this, Congress passed a law

requiring congressional elections to be held only in districts. Again, Congress deemed it necessary or proper that congressional elections throughout the country should be held on the same day, and hence enacted a law fixing a day upon which such elections should be held in all the States. With these exceptions, the prescribing of laws regulating the manner of holding elections was left to the States.

In the meantime, the States themselves were making progress in the development of a system of election laws calculated to bring about honest elections. Congress might itself, before any action along that line had been taken by the States, have required that voting in congressional elections should be by secret ballot, and could itself have adopted this method of voting. The States, however, were the pioneers in this line. If Congress had deemed this an unwise manner of holding elections, it could have provided that congressional elections should continue to be held in the old way. Apparently it acquiesced in the wisdom of the new State laws. The same is true of the State laws requiring registration of voters in advance of the election. Congress was willing to acquiesce in these new measures, but this did not mean that it surrendered its power to alter or change them at any time for the purpose of correcting defects.

The modern method of voting by secret ballot involved the printing of an official ballot to be fur-

nished the voter. And this required some method of determining what names should be printed on the ballot. It was usually provided that a candidate could procure his name to be printed by a proper certification of the fact that he had been nominated by some political party. This brought the process of nominating candidates into a more intimate relation with the election itself than had previously existed. It was at once apparent that, if a candidate could not be punished for fraud, corruption, or violence used in securing his nomination, the election itself could not be said to be free from the taint of these vices. If a nomination secured the right to a place on the ballot, it was necessary to protect the integrity of the election, that that nomination itself should not be bought or secured by fraud. Hence, the next step was to throw safeguards around the means of securing nominations and thereby a place on the official ballot. The result has, very generally, been the enactment of statutes requiring that, in order to entitle a nominee to have his name on the ballot, his nomination must have been made in a primary election called and held under provisions of the law very similar to those regulating general elections and with much the same safeguards thrown around them. This was a natural development of the system of elections now prevailing in this country.

As the system was developed by the States, Congress was content merely to acquiesce. When the

Act now in question was passed, however, it evidently thought that some general regulations enacted by it were necessary to properly protect the election of Members of Congress. It was apparent that the success of the experiment in primary elections itself depended very generally upon laws which would properly curb and restrain candidates in the lavish expenditure of money. If candidates were left free to spend money without limit, even for such purposes as are ordinarily legitimate, for the purpose of securing a nomination in a primary election, those elections would soon come to be the instrument by which every man would be debarred from becoming a successful candidate, unless he was able and willing to spend a fortune, or unless he could enlist some powerful interests which would furnish the necessary money. Neither contingency was to be contemplated with equanimity. It may well be supposed that Congress was moved to enact this legislation because it foresaw the demoralizing effects which would result from just such extravagant and lavish expenditures of money as was witnessed in the Michigan campaign, out of which this case arises.

At any rate, Congress concluded that the purity and honesty of congressional elections needed some help from it. This court had long ago pointed out the two great sources of danger to the Republic which lurked in the manner of holding congressional elections. In *Ex parte Yarbrough, supra,*

at page 667, the court was dealing with cases in which violence had been resorted to to prevent men from going to the polls and voting, but it took occasion in concluding its opinion to say:

> If the recurrence of such acts as these prisoners stand convicted of are too common in one quarter of the country, and give omen of danger from lawless violence, the free use of money in elections, arising from the vast growth of recent wealth in other quarters, presents equal cause for anxiety.
>
> If the government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other.

Here was a solemn warning that, if the time ever comes when elections are controlled by the free use of money, when men are elected to high offices merely because they are able to command and use large amounts of money, the country will be in serious danger. Could a better illustration of what the court had in mind be imagined than this very case, in which a man, confessedly unknown to the voters of his State, and who, his

best friends admitted, could not possibly be nominated or elected by them without the expenditure of vast sums of money, has actually been nominated and, as a direct result, elected to the United States Senate by the lavish use of hundreds of thousands of dollars?

It is said that the Constitution does not mention primary elections and did not have them in contemplation. If this statement be accepted, it does not follow that the power to enact this legislation was wanting. What the Constitution did contemplate was that Congress should have the power to effectively protect the purity and the integrity of congressional elections. The same argument was made when, after the Civil War, Congress enacted laws to protect elections and prevent the intimidation of voters, and, as a part of the law, provided for the appointment of officers who should have authority to keep the peace at the election. It was contended that whatever power Congress might have over the elections themselves, the power to maintain the peace was one of the reserved powers of the States and could not be exerted by Congress. But in *Ex parte Siebold*, *supra*, at page 396, the court said:

> The argument is based on a strained and impracticable view of the nature and powers of the National Government. It must execute its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as on persons. And to do this it must necessarily

have power to command obedience, preserve order, and keep the peace; and no person or power in this land has the right to resist or question its authority, so long as it keeps within the bounds of its jurisdiction. Without specifying other instances in which this power to preserve order and keep the peace unquestionably exists, take the very case in hand. The counsel for the petitioners concede that Congress may, if it sees fit, assume the entire control and regulation of the election of representatives. This would necessarily involve the appointment of the places for holding the polls, the times of voting, and the officers for holding the election; it would require the regulation of the duties to be performed, the custody of the ballots, the mode of ascertaining the result, and every other matter relating to the subject. Is it possible that Congress could not, in that case, provide for keeping the peace at such elections and for arresting and punishing those guilty of breaking it? If it could not, its power would be but a shadow and a name. But, if Congress can do this, where is the difference in principle in its making provision for securing the preservation of the peace, so as to give to every citizen his free right to vote without molestation or injury, when it assumes only to supervise the regulations made by the State, and not to supersede them entirely? In our judgment there is no difference; and if the power exists in the one case it exists in the other.

In *Ex parte Yarbrough, supra*, the court discussed the scope of the power of Congress under Section 4 of Article I, and held, in effect, that the power was ample to protect congressional elections from any form of threatened violence and corruption, saying, at page 658:

> If it has not this power it is left helpless before the two great natural and historical enemies of all republics, open violence and insidious corruption.
>
> The proposition that it has no such power is supported by the old argument often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on words which expressly grant it. The brief of counsel before us, though directed to the authority of that body to pass criminal laws, uses the same language. Because there is no *express* power to provide for preventing violence exercised on the voter as a means of controlling his vote, no such law can be enacted. It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the

> instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted and all other powers vested in the government or any branch of it by the Constitution.

The court then said that there was no express authority in the Constitution to pass laws to punish theft or burglary, but repudiated the idea that the power to protect the Treasury or the mails of the United States, by punishing such theft or burglary, did not exist.

Counsel in this case, as in the *Siebold* case, admit that Congress, if it sees fit, may assume entire control and regulation of the election of Representatives and that this includes the appointment of the places for holding the polls, the times of the voting, and the officers for holding the election, as well as the custody of the ballots, the mode of ascertaining the result, and every other matter directly connected with the final election itself. They admit that it is now beyond question that Congress may enact such laws as are necessary to prevent the intimidation of voters for the purpose of keeping them away from the polls. They will not deny the power of Congress to punish a candidate for giving money to a voter on the day of the election for the purpose of influencing his vote. Presumably, they will not deny that this power would extend to the purchasing of a vote at any time, whether on the day of the elec-

tion or six months prior thereto. Apparently, they do not question the power of Congress to limit the amount which a candidate, after nomination, may contribute to the campaign fund. None of these things are expressly mentioned in the Constitution. They are within the power of Congress only because they are necessary to effectively prescribe the manner in which Members of Congress shall be elected. Can it be said that the power of Congress is any less to grapple with conditions which have grown up and under which it finds it possible for candidates to accomplish the same baneful results by resorting to corrupt practices for securing a nomination at a primary election held under the laws of a State and which nomination entitles them to places on the official ballot and often insures their final election? It can not be said that this is beyond the power of Congress because it does not occur on the day of the election. The registration of voters does not occur on the day of the election and is no more a part of the election than is the nomination of candidates. But it is so related to the election that no one would doubt the power of Congress to require or regulate it or to dispense with it or to punish fraudulent registration. The nomination of candidates under a legalized primary is the first step which the law provides looking to the making up of the official ballot to be used on the day of election. It is certainly just as intimately related to the election and

has as direct a bearing upon it as the registration of voters. Corruption in securing it taints the final election just as much as fraud in the registration of voters. If one is within the power of Congress, because a necessary or proper means of protecting the election itself, the other must be equally so.

Congress has acquiesced in the plan by which the names of the candidates who are successful in the primary election go upon the official ballot. It would scarcely be doubted that Congress has the power to make it a criminal offense for a candidate to bribe the officer charged with the duty of having the ballots printed to place his name on the ticket as a nominee when he has not been nominated. Upon exactly the same principle, it would be within its power to prescribe punishment for the same candidate if he should attempt to get his name on the ballot by bribing voters to vote for him in the primary election. Until quite recently Congress had not passed a law of this kind, evidently assuming that such flagrant offenses as these may be left to punishment under the State laws. But it is universally recognized that the lavish use of money in elections always tends to corruption and usually amounts, at least, to the indirect purchase of influence, even though the actual bribery of voters or officials may not be resorted to. If Congress may provide for the punishment of candidates who resort to bribery in

a primary election as the means of getting their names on the official ballot at the general election, it is equally within its power to provide punishment for those who attempt to accomplish the same result, and thus control the general election by the excessive use of money with all its corrupting influence and effects. And this is what it has done. It has left the manner of electing Senators and Representatives to be prescribed by State laws, including the provisions for primary elections, and has been content merely to add to these laws a provision of its own limiting the amount which a candidate may use, or cause to be used, over and above his personal expenses, in the effort to secure a nomination and election to Congress. Plainly, this is within its power to make regulations for the protection of congressional elections. It is not claimed that Senator Newberry bribed either voters or officials, or intended that they should be bribed. It is not necessary to show that any of the conspirators resorted to such practice. The charge is that they conspired together to violate the law by using money in amounts which Congress has deemed necessarily corrupting and has prohibited.

It is said that if this legislation be treated as a regulation of the candidate rather than of the election, no reason can be suggested in support of its validity. It regulates the candidate only so far as his conduct bears upon the election. Laws providing punishment for the bribery of voters,

for fraudulent registration, for intimidation of voters, are none the less regulations of the manner of holding elections because they act upon and restrain the conduct of candidates. And the same is true of this law which forbids the use of an excessive amount of money to control nominations and the resulting elections.

The rule laid down in the decisions of this court, from which we have quoted, that Congress is invested with the broadest power to enact legislation deemed necessary to protect the integrity of congressional elections, openly through violence or insidiously through corrupting influences, has never been departed from. On the contrary, in the recent case of *United States* v. *Gradwell*, 243 U. S. 476, it was expressly reaffirmed when it was said, at page 482:

> Whatever doubt may at one time have existed as to the extent of the power which Congress may exercise under this constitutional sanction in the prescribing of regulations for the conduct of elections for Representatives in Congress or in adopting regulations which States have prescribed for that purpose has been settled by repeated decisions of this court.

The court, in the same opinion, makes it clear that the power given to Congress was intended to be the absolute power to control, when necessary, the method of selecting Members of Congress, because this was deemed necessary to the assured

safety of the Republic. Mr. Madison was quoted, at page 484, as follows:

> It was found impossible to fix the time, place, and manner of election of representatives in the constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity and prevent its own dissolution. * * * Were they exclusively under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised. The power appears to me satisfactory and as unlikely to be abused as any part of the constitution.

And Mr. Hamilton (pp. 484–485):

> They [the convention] have submitted the regulation of elections for the Federal Government, in the first instance, to the local administrations, which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory, but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Manifestly, this provision of the Constitution grew out of the conviction that it would be suicidal

for the new government to commit to any other government a controlling power over the choosing of its officers without reserving to itself a supervisory power. For a State to arrange its election laws by providing for two elections, the first for the purpose of reducing the number of candidates and the second for the purpose of choosing between the surviving candidates, is, in many States, for all practicable purposes, equivalent to choosing the officials in the first or primary elections. If it be said that Congress has the fullest power over the second or final election, but is without power to control or regulate in any way the first or primary election, then, in such States, the election of Members of Congress has, in truth, been committed to regulation by the States and entirely removed from the control of Congress. And what becomes the power of self-preservation intended by this section to be vested in the Federal Government? Certainly to what extent the States may regulate such primary elections Congress may, to the same extent, exert a supervisory power. It is true Mr. Justice Clarke, in the *Gradwell* case, said, in effect, that whether primary elections were without the regulatory power of Congress was an open question. But this was a question not necessary to be decided in that case, and the court expressly refrained from deciding it, and doubtless from giving it serious consideration. When it is considered in this case, and particularly in the light of the cases too numerous to be cited, but

which will readily occur to the court, in which statutes dealing with matters not mentioned in the Constitution, but deemed necessary for the efficient exercise of some granted power, we confidently submit that there is no valid constitutional objection to the legislation now involved.

XX.

The State cases cited by counsel are not in point.

Certain decisions of the State courts (e. g., *Ledgerwood* v. *Pitts*, 122 Tenn. 570; *Montgomery* v. *Chelf*, 118 Ky. 766; *State* v. *Taylor*, 220 Mo. 619; *State* v. *Nichols*, 50 Wash. 508; *Gray* v. *Seitz*, 162 Ind. 1; *State* v. *Erikson*, 119 Minn. 152) are cited as authority that the word "elections" in Section 4 of Article I does not include a nominating primary. These decisions, however, should be carefully considered, both as a whole, and as to the special point regarding which the word "elections" was of importance. They were all cases involving the constitutionality of legislation regulating primaries; and in every one of them the legislation was sustained. One of the objections made to this legislation was that it did not conform in certain of its details to specific constitutional provisions regarding "elections." The holding of the Courts merely was that the constitutional provision relied on was, *by its very nature*, inapplicable to a primary. For example, the Constitution of a State provides that every male citizen 21 years of age shall be entitled to vote at

every "election." Since the primary is necessarily held before the election, to apply this provision to the primary would exclude those persons who reached 21 years between the primary and the election. Necessarily, such a provision could not apply to the primary, and this was all that was held in the cases referred to.

This is not a holding that the word "elections" in a constitutional provision which (as plaintiffs in error claim) contains the sole grant of power over the subject shall be construed, like a penal statute or an exception, so as to limit the power of the legislature to the final election, and restrain it from dealing in any way with the nomination of candidates. No such strict construction would be placed even on the charter and by-laws of a corporation or a club which conferred on the directors or governors the power over elections. An election necessarily involves candidates between whom to elect. If there be but one candidate, there is no election, and if there be a thousand, the election decides nothing. The very word "election," therefore, calls to the mind the idea of a candidate who has in some way succeeded in presenting himself to the suffrages of the electors under rules which permit a fair and actual choice. This Court can not, under its long-established rule of interpreting constitutions, do other than give a liberal construction to the word "elections" to carry out the main end of the Constitution, viz, to establish an honestly representative legislature.

Counsel for plaintiffs in error in their Brief attempt to get the benefit of the argument that the Federal Corrupt Practices Act is an interference with the power of the States over the subject, without directly committing themselves to the proposition that the legislatures of the States have power to regulate nominations to the offices of Senator and Representative and to punish corrupt practices in connection therewith. The reason for this is that counsel find themselves in a dilemma from which there is no escape. *The power of Congress over elections under Section 4 of Article I is exactly equivalent, though paramount, to the power of the State legislatures. What power the latter have, the former has. Vice versa, if Congress have not the power, neither have the State legislatures. The power, therefore, if not vested in Congress, is not vested in any body. Although, as has been shown above, the State legislatures have ample power to pass statutes regulating State primaries or conventions, there is (on the theory propounded by plaintiffs in error) no power on earth which can regulate primaries or conventions dealing with nominations to the federal office of Senator or Representative.*

XXI.

Objections to the charge.

The main objection urged against the charge, namely, that it misconstrued the Act of Congress, has been sufficiently discussed. If the trial judge

correctly construed the Act, the argument already made disposes of the objection based upon that and also disposes of any contention based upon requests for instructions which were refused. These requests are set out in the record, but no argument is made in the brief in support of them, obviously for the reason that if the plaintiffs in error have failed to convince this court that the instruction construing the Act actually given was erroneous, the requests for contrary instructions were necessarily properly refused. The only other objection to the charge is to that part of it which is as follows:

> Counsel have also indulged in some comment concerning the criminal intent which is involved in a conspiracy. A criminal intent is one of the essential elements of an unlawful conspiracy. There must be an evil design and a wrongful purpose. A conspiracy can not exist without a guilty intent being then present in the minds of the conspirators. But this does not mean that the parties must know that they are violating the statutes of the United States. In order to warrant a verdict of guilty, the Government is not required to prove that the parties knew that some statute forbade the acts they were performing. Every person is presumed to know the law, and also to know to intend the natural and ordinary results and consequences of his acts and conduct. An unlawful or wrongful intent may be implied from the intentional doing

> of an unlawful act. Wrongful acts, knowingly or intentionally committed, can not be justified on the ground of innocent intent. To establish a conspiracy, to violate a law, or to commit an offense, it is only necessary to show an agreement to do the acts which constitute such violation or offense. The only question for you to pass upon is whether the defendants violated the law; not whether they had any knowledge that they were violating the law. (Rec., p. 943.)

Raising the same question, plaintiffs in error complain of certain rulings made in the progress of the trial. They complain of a remark made by the court to counsel for defendants when counsel was attempting to make, in substance, the above contention that defendants could not be guilty of a violation of the Corrupt Practices Act unless they were acquainted with the act, even to the extent of understanding its terms. (Rec., pp. 927-928.) The question of law was for the court and this was stated (Rec., p. 927), and the court also stated to counsel (Rec., p. 928), in answer to what counsel said to him, that—

> so far as the first count is concerned it would matter not whether Mr. King was mistaken in his construction of the law or not. * * * The sole question is whether the things were done, intentionally done, which constitute an offense under the laws of the United States.

This was said to counsel. The court later advised the jury fully on the subject in the instruction above set out.

Plaintiffs in error in the same subject of argument have said much concerning the question of good faith. They have not pointed to any part of the charge where they complain of anything the court said about good faith.

The only time the court referred to it was when ruling upon the admissibility of the private letters Mr. Newberry had written to and received from a friend who had no connection with the conspiracy. Counsel for defendants had stated (642) that the letters bore upon "the good faith of the candidacy" of Newberry. The court said that the "good faith or bad faith of Senator Newberry *in entering upon his candidacy* is not in issue"; and that, if it were, the proffered testimony came within the self-serving rule. There certainly can be no just complaint of this.

The plaintiffs in error base their argument on the fact that the statute says every person "wilfully violating" any of the foregoing provisions of this act shall upon conviction be fined, etc.

They first assert that the indictment does not allege that the acts committed by the plaintiffs in error were done wilfully. They ignore the fact that the charge in the indictment is not that the plaintiffs in error violated the Corrupt Practices Act, but that the charge is conspiracy under Sec. 37.

They overlook the well-settled principle that in alleging a conspiracy to commit an offense, the offense conspired to be committed need not be averred with the same particularity as if the defendants were indicted for a commission of the substantive offense. *Anderson* v. *United States* (C. C. A. 8th), 260 Fed. 557, 558; *Knauer* v. *United States* (C. C. A. 8th), 237 Fed. 8, 12; *Lew Moy* v. *United States* (C. C. A. 8th), 237 Fed. 50, 52; *Aczel* v. *United States* (C. C. A. 7th), 232 Fed. 652, 659, 660; *McConkey* v. *United States* (C. C. A. 8th), 171 Fed. 829, 832, 833; *Thomas* v. *United States* (C. C. A. 8th), 156 Fed. 897, 906, 907; *Van Gesner* v. *United States* (C. C. A. 9th), 153 Fed. 46, 54; *Ching* v. *United States* (C. C. A. 4th), 118 Fed. 538, 540.

Neither have they considered that only one of the plaintiffs in error, Truman H. Newberry, was capable of committing the offenses defined by the Corrupt Practices Act; that persons may be guilty of conspiracy with one to commit an offense which as a matter of law only that one can commit (*United States* v. *Rabinowich*, 238 U. S. 78, 86; *United States* v. *Holte*, 236 U. S. 140, 144, 145; *Chadwick* v. *United States* (C. C. A. 6th), 141 Fed. 225, 235-237; *Tupack* v. *United States* (C. C. A. 3d), 220 Fed. 445, 446, 447; *Greenberg* v. *United States* (C. C. A. 1st), 145 Fed. 81, 84, 85; *Scott* v. *United States* (C. C. A. 6th), 130 Fed. 429, 432, 433); and that the indictment alleges with the most technical

accuracy the conspiracy in question, which included—

> on the part of said Truman H. Newberry of wilfully violating the Act of Congress approved June 25, 1910, as amended by the Acts of August 19, 1911, and August 23, 1912.

There is neither reason nor authority for the interpretation the plaintiffs in error give to the word "wilfully." In a statute in which it occurs it does not have the effect of creating the defense that ignorance of the law is an excuse for defendants' conduct. Plaintiffs in error cite one case, *Cutter* v. *State*, 36 N. J. L. 125, in which they say the court held that ignorance of the law was an excuse. Without stopping to consider whether a justice of the peace is criminally liable for accepting fees not allowed by law, but which he thinks are proper, the case is not regarded in even the State where it was decided as an authority on the point upon which it is cited here. The case of *Cutter* v. *State*, *supra*, was cited and relied upon in *State* v. *Halsted*, 39 N. J. L. 402, and the court in speaking of it said that the case would not—

> be used as authority to overthrow the accepted doctrine that ignorance of the law is no excuse for crime.

The claim of defendants is universally repudiated.

The governing principle has been well stated as follows:

> Ignorance of the law will not excuse its violation even when one endeavors to ascertain the law and is misled by the advice of counsel. . . . "The maxim ignorantia legis, neminem excusat," said the court, "is a stern but inflexible and necessary rule of law that has no exceptions in judicial administration." . . . It is very true that to constitute a crime, there must be an act and intent. But in such a case as this it is enough if the act be knowingly and intentionally committed. The law makes the act the offense, and does not go farther, and require proof that the offenders intended, by the prohibited act, to violate the law. The act being intentionally done, the criminality necessarily follows." *State* v. *Foster*, (R. I.), 50 L. R. A. 339, 342.

The fact that a person honestly believes that he has a right to do what the law declares illegal will not affect the criminality of the act. *State* v. *Welch*, 73 Mo. 284, 39 Am. Rep. 515; *People* v. *Brooks*, 1 Denio (N. Y.) 457, 43 Am. Dec. 704; *Medrano* v. *State*, 32 Tex. Crim. 214, 22 S. W. 664, 40 A. S. R. 775.

The principles stated in the foregoing instruction have often received the approval of the courts, including this court. *Ellis* v. *United States*, 206 U. S. 246, 257; *Armour Packing Co.* v. *United*

States, 209 U. S. 56, 85, 86; *Reynolds* v. *United States*, 98 U. S. 145, 167; *In re Independent Publ. Co.* (D. C. Montana), 228 Fed. 787, 789; *Agnew* v. *United States*, 165 U. S. 36, 50.

The case of *Ellis* v. *United States* (and six other cases), 206 U. S. 246, involved prosecutions under the act of August 1, 1892, 27 Stat. 340, limiting the hours of laborers and mechanics employed by the United States or any contractor or subcontractor upon any of the public works of the United States to eight hours per day, except in cases of extraordinary emergency.

Ellis had permitted his associates in business to employ men for nine hours, in the hurry to get work done, was indicted and convicted.

The court said:

> There is only one other question raised in Ellis's case. It is admitted that he was a contractor within the meaning of the act and that the workmen permitted to work more than eight hours a day were employed upon "public works," and it is not denied that these workmen were "mechanics." The jury were instructed, subject to exception, that if the defendant intended to permit the men to work over eight hours on the calendar day named he intended to violate the statute. The argument against the instruction is that the word "intentionally" in the statute requires knowledge of the law, or at least that to be convicted Ellis must not have supposed, even

> mistakenly, that there was an emergency extraordinary enough to justify his conduct. The latter proposition is only the former a little disguised. Both are without foundation. If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by the law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent. *Ellis* v. *United States*, 206 U. S., 246, 257.

The first paragraph of the "Elkins Act" as amended by the Act of June 29, 1906 (34 Stat., ch. 3591, p. 587), provides:

> That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed.

The Act then provides:

> The willful failure upon the part of any carrier subject to said Acts to file and pub-

> lish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs * * * , shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine * * *.

It was held in *Chicago, etc., R. Co.* v. *United States* (C. C. A. 8th), 162 Fed., 835; 90 C. C. A., 211, that the word "willfully" was used in the above statute in the sense that the *act* was done knowingly and purposely.

The Twenty-eight-hour Law, so-called (Act of June 29, 1906, 34 Stat. L., 607), provides that no railroad, express company, car company, common carrier, etc., shall confine animals in cars for a period longer than twenty-eight hours without unloading same in a humane manner into properly equipped pens for rest, water, feeding, etc.

The third section of the Act provides that if the railroad, express company, car company, common carrier, etc., "knowingly and willfully fails to comply with the provisions" of the law, they shall be liable to pay a penalty, etc.

It has been held that the words "knowingly and willfully" as used in the Twenty-eight Hour Law, mean that the *acts* were done intentionally and purposely. *United States* v. *Sioux City Stock Yards Co.*, 162 Fed. 556; *United States* v. *Atchison, etc., R. Co.*, 166 Fed. 160; *United States* v. *Union Pacific R. Co.*, 169 Fed. 65; *St. Louis, etc., R. Co.* v. *United States* (C. C. A.), 169 Fed. 69.

The "Corrupt Practices Act," after stating what the candidates for Senators and Representatives may expend, etc., provides (sec. 11) that every person willfully violating any of the foregoing provisions of this Act shall upon conviction be fined, etc.

The act of a defendant done in good faith may be willful. *United States* v. *Union Pac. R. Co.*, 169 Fed. 65; *Chicago, etc., R. Co.* v. *United States*, 162 Fed. 835; *Eldorado Coal, etc., Co.* v. *Swan*, 227 Ill. 586, 592, 81 N. E. 691; *State* v. *Clark*, 102 Ia. 685, 72 N. W. 296.

In the case of *Eldorado Coal & Coke Co.* v. *Swan, supra*, 81 N. E. 691, the court said:

> Willful is a word of familiar use in every branch of law, and, although, in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blamable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this: That he knows what he is doing and intends to do what he is doing, and is a free agent.

The plaintiffs in error, on pages 94, 95, and 96 of their brief, come near to discovering the meaning of the word "wilful" as used in the statute. On pages 94 and 95 they refer to the Act of June 25, 1910, and its requirements, and say (p. 95):

> The wilful violations of the provision of the Act which were made crimes by this statute consisted in the refusal of a committee or of an individual to file any statement as required by the Act, or if a statement should be filed, a failure to have it include all the contributions and expenses as defined by the Act.

They then argue that if the required statement did not contain all the contributions and expenses, but it clearly appeared that they were omitted "unintentionally" (95), there would be no wilful violation; that if through "oversight" (96), a candidate should exceed his expenditures there would be no wilful violation. On page 94 of their brief they speak of "unwittingly" violating.

It may be that if a candidate were indicted for failure to include all his expenses in a report, it would be a defense if the omission were done unwittingly, or unintentionally or through oversight. But, on the other hand, if he failed to make any report, it would be no defense that he did not know of the existence of the law; or if he intentionally omitted to include expenditures he could not be heard to say as a defense that the report he was making was so far as he knew a voluntary report—that he was not aware that the subject was covered by a United States statute.

The court correctly charged the jury on this subject. The Government was not required to prove that the defendants knew some statute for-

bade the acts they were to perform. It was sufficient to show an agreement to do the acts which the statute says is an offense.

XXII.

The challenge to the array of jurors was properly overruled.

In the brief for plaintiffs in error, at page 142, the grounds upon which they claim that the challenge to the array of jurors should have been sustained are stated as follows:

> (1) The clerk of the court sent out a letter to the county clerks in the various districts suggesting they send in suitable names for the panel. It is presumed some of them did so, and it is further presumed that some names so sent reached the box.
>
> (2) The trial judge changed the language, or notice, on the back of the subpœnas for jury duty.
>
> (3) He sent to each juror a questionnaire, and he assumed the examination of these questionnaires in the absence of counsel for any defendant and from this examination eliminated many prospective jurors. Just how many we do not know.

None of these complaints, in view of the facts stated above, would have justified the court in sustaining the array.

1. As stated above, the formal challenge, in writing, as presented to the court, is not made a part of the record by the bill of exceptions. If

it can be looked to, as it appears in the printed record, for any purpose, it will appear that the charge was that lists were secured from county clerks and others and used without change or alteration. This, however, was an unsworn paper signed by counsel. If the point made was to be insisted on, it was necessary to support the averment by proof. No proof was offered. What the real facts were do not appear, except as they are stated in the opinion of the judge overruling the challenge. He states that county clerks who had the custody of county jury lists were asked to furnish and did furnish lists of names, and that similar lists, and other sources, were, upon request, furnished by other reliable and responsible persons, and that from these lists the clerk and jury commissioner made their own selections.

It does not appear that all the names on any list furnished were used or that the names put in the box consisted alone of names appearing on any of the lists. There is nothing to support a contention that the clerk and jury commissioner merely inspected and approved lists furnished by others. All that appears is that, in seeking information as to who would be proper jurors, they asked suggestions from the men in the various counties who were presumed to be best able to give reliable information, and that, with this, and presumably other information, and their own personal knowledge, they made the selections. Coun-

sel recognize that this is the state of the record, for in their brief they make no claim that the lists furnished were used in any way except as information to enable the clerk and jury commissioner to act intelligently. Hence, as above quoted, after stating that a letter was sent out asking county clerks to furnish lists of suitable names, they merely say:

> It is presumed some of them did so, and it is further presumed that some names so sent reached the box.

The sole question thus presented is whether a jury list is illegally made up merely because some of the names have been selected from lists of names furnished by request by county court clerks. The provision of the Federal statutes for the selection of jurors is found in section 276 of the Judicial Code, which, as amended by the Act of February 3, 1917, 39 Stat., c. 27, Sess. II, pp. 873–874, reads as follows:

> All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts hav-

> ing more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

It is not contended that this statute was not complied with, unless the facts stated above constitute such a failure to so comply.

No authority is cited by counsel to the effect that the seeking of information, as it was sought in this case, to aid in making intelligent selection makes illegal the selections, if the information is used. The case which apparently is supposed to be nearest in point is *State* v. *Nearhouse*, 29 La. Anno. Repts., 824. That case, however, does not in any way deny the right and the duty of jury commissioners to obtain information in every proper way before making their selections. The statute required jury commissioners to select the names from the qualified voters. In the case before the court they requested a third party to furnish a list of names. This list they merely inspected and approved. The court held that the selection was,

in fact, made by a third party and not by the commissioner. It was not a case where the commissioner had used the list furnished as mere information and then selected some of the names on it, together with names secured from other sources.

In *Clare* v. *The State*, 30 Md. 164, the law required the several judges to meet and select jurors. There was no meeting of the judges. A deputy clerk made a list of names and presented it to each individual judge, who approved it without particular examination. It was, of course, held that the list was not selected in accordance with the statute.

Shepherd v. *State*, 89 Miss. 147, did not involve the selection of names but involved only the action of the judge in drawing the names after they had been selected.

In *Finley* v. *The State*, 61 Ala. 201, the judge directed the sheriff to summon additional jurors from persons in the court room, when the law expressly required them to be summoned from the county. It was merely held that the action of the judge in limiting the sheriff to a selection from those who happened to be in the court room was illegal.

In *Healy* v. *The People*, 177 Ill. 306, the statute required that when it became necessary to summon additional jurors they should be summoned in the same way as other jurors, and this was not done.

Dunn v. *United States*, 238 Fed. 508, was decided before section 276 of the Judicial Code had been amended by the Act of February 3, 1917. Before this amendment, the section referred to required the clerk of the court to act as one of the jury commissioners. The court merely held that this was a duty which he could not delegate to a deputy clerk, and that if a deputy clerk acted in selecting jurors the selection was not lawfully made. The Act of February 3, 1917, changed this, by expressly providing that either the clerk or an authorized deputy might act.

In *United States* v. *Murphy*, 224 Fed. 554, it was held that where the names selected were taken in part from a list furnished by an assistant district attorney the selections were illegal. Since an assistant district attorney is constantly appearing as counsel for one of the litigants in the court, there will be little dissent from the conclusion that it is improper to select jurors from lists furnished by him. This was the only question the court had before it. Some language is used in the opinion which may give some color to a contention that lists made up by any one other than the clerk and jury commissioner should not be used for any purpose. It was not necessary, however, for the court to decide this, and a reading of the entire opinion indicates that the court did not intend to go that far. Thus it was said, at page 556:

> It is evident, and has been several times decided in similar cases, that it was not con-

templated that the clerk and commissioner of jurors should visit and abide in the several counties from which jurors are to be selected for a sufficient length of time to familiarize themselves or become acquainted with the citizens subject to jury duty and competent to act as jurors, but that it was anticipated these officers, in performing their duties, would obtain information from various legitimate sources, including, undoubtedly, personal inquiry. It has always been the custom, whether warranted by law or not, for these officers, in making up lists and selecting names of persons to act as jurors, to make inquiry of various well-informed persons, obtain lists from various sources, usually the grand and petit jury lists of the several counties, and then make a selection of names based on the information thus derived and not on personal acquaintance or actual knowledge as to the qualifications and fitness of the persons whose names have thus been finally selected to go in the box.

And, at page 562, the court referred to the case of *Klemmer* v. *Mount Penn Gravity R. R. Co.*, stating that that case dealt with a mode of preparing jury lists and drawing and selecting juries quite similar to that provided by the United States statutes, and quoted from the opinion as follows:

The jury commissioners and the judge, in alternately selecting names from the whole qualified electors of the county, may use

> lists made up by themselves of persons whom they deem sober, intelligent, and judicious, although the information upon which their judgment is based is obtained from others.

It is impossible for a jury commissioner in a large district to intelligently make selections of jurors unless he bases his selection upon information obtained from others. If he knows a man in a particular county, nobody would question his right to make inquiries of others as to the qualifications of that man. It may happen, however, that he does not even know the names of more than a very limited number of men in a particular county. He may not personally know a single man in that county. There are usually, however, methods of selecting jurors for service in the State courts very similar to the methods employed in the Federal courts. What better source of information, therefore, could be imagined than is to be found in the jury lists of the various counties, and what more appropriate way of getting jurors in a county than by applying to county clerks for them? If a request had been made of a particular county clerk to furnish the full list of names required, and that list should have been simply adopted and put in the box, a different question might arise. But in this case all the county clerks were requested to furnish lists, the aggregate number of names thus obtained presumably being much in excess of the number required. It can not be

claimed that any such list was adopted as a whole or without careful investigation by the clerk and commissioner. Indeed, the utmost claim which counsel make upon the record is that it is "presumed that some names so sent reached the box." This was in accord with the practice and custom which has prevailed for many years with the approval of the Federal courts. In the case of *United States* v. *Collins*, 1 Woods 5th Circ. (U. S.) 499, 511, 512, Fed. Cas. 14837, the officers whose duty it was to select the list of jurors had requested a postmaster to furnish a list of names from his county and he complied. Some of the suggested names were chosen by the officers. The court drew a distinction between giving information and official action and held that the obtaining of lists of this kind was a proper means to get the requisite information as to proper persons to select by applying to the most competent and reliable persons for such information, and added:

> It could not be expected that the officers should be personally acquainted with the entire male population of the district, consisting of more than eighty counties. They were necessarily obliged to rely on information derived from others. If they acted in good faith in getting the best information they could and made their selection accordingly (and nothing appears to the contrary, but that they did this), their action can not be impeached or held invalid. Impossibilities can not be required of any officers.

It is submitted that no illegality has been shown in the method of selecting jurors in this case.

2. There was no error in the action of the judge in having endorsed on the back of the subpœna for jury duty a warning to the juror not to permit any one to talk with him about pending cases.

It is difficult, indeed, to imagine how this very proper action on the part of the judge can be the ground of complaint. No reason for such a complaint seems to be suggested in the brief. The warning to the juror thus given serves simply to call his attention to what would have been his plain duty if no warning had been given. When jurors appear and are accepted as the regular jurors for a term, it is usual for the judge to publicly give them this same warning. It would not be improper for him to publish such a warning in a newspaper before the convening of each term of court. Indeed, any man who undertakes to discuss a pending case with one whom he knows to have been summoned as a juror is guilty of contempt of court. It is true that this warning does not usually go to the juror with the subpœna that is served upon him. The fact that the duty of a subpœnaed juror in this regard is so generally understood makes it unnecessary. But the large number of defendants in this case and the widespread interest in the approaching trial made it highly proper that the attention of each juror summoned should be directed to this duty so that he would be on his guard.

3. The objection based upon the action of the judge in excusing jurors in advance of the trial has been quoted above from the brief of counsel. The objection does not seem to be to his action in sending out questionnaires the answers to which would furnish information important to be known in determining the qualifications of a juror. There could scarcely be any serious objection to this. Indeed, if this was done in all cases, the answers to such questionnaires would be of very great value to counsel on both sides when the jury for a particular case is being selected. The objection, however, is stated to be that, in the absence of counsel for the defendant, the judge examined these questionnaires and "from this examination eliminated many prospective jurors."

As shown in the statement of facts made above, no juror was excused for any cause which would not have justified his being excused if he had appeared at the trial. This statement was specifically made by the trial judge in his opinion, and the brief of counsel does not claim that there is any evidence to the contrary. The sole question, therefore, is whether it is error for a judge in advance of the trial to excuse a prospective juror, and relieve him from attending court for a reason which would entitle him to be excused if he did attend.

It is stated in the brief of counsel, at page 144, that in the case of *United States* v. *Gale*, 109 U. S.,

65—although the question was not properly raised and therefore was not decided—

> it is stated that if certain persons are excluded by the court from serving on the jury, the jury thus drawn will be held invalid.

In that case there was objection to an indictment upon the ground that the grand jury had been improperly constituted. The point was that the judge had excluded from the grand jury certain persons whose names were drawn because they had taken part in the Rebellion. This action was taken pursuant to Section 820 of the Revised Statutes, which, it was claimed, was unconstitutional. It is true that this question was not decided for the reason that the court held that it was not directly raised. It is scarcely to be inferred from the opinion, however, that even if the question had been properly raised, and the court had held that the excluded jurors were competent, the indictment would have been held bad. Indeed, the intimation is decidedly the other way. The court said:

> The remarks apply with additional force where the objection is not to the disqualification of jurors who are actually sworn upon the panel, but to the exclusion, or excuse, of persons from serving on the panel. A disqualified juror placed upon the panel may be supposed injuriously to affect the whole panel; but if the individuals forming

> it are unobjectionable, and have all the necessary qualifications, it is of less moment to the accused what persons may have been set aside or excused. The present case is of the latter kind. No complaint is made that any of the grand jurors who found the indictment were disqualified to serve, or were in any respect improper persons. It is only complained that the court excluded some persons for an improper cause—that is, because they labored under the disqualification created by the 820th section of the Revised Statutes, which is alleged to be unconstitutional. It is not complained that the jury actually empaneled was not a good one; but that other persons equally good had a right to be placed on it. These persons do not complain. If their right to serve on the grand jury was improperly infringed, perhaps they might complain of being excluded. That is another matter. Or, perhaps, the defendants, if correct in their assumption that the law is unconstitutional, and that the court was governed by an improper rule in excluding persons under it, might have had the benefit of the error by moving to quash the indictment, or by pleading in abatement. (109 U. S., 70.)

No other authority is cited in support of the contention that a judge may not, before trial, for a proper reason, excuse from attendance upon court and service upon the jury one who has been summoned. The question does not seem to be involved in any case decided by the Federal courts.

The State courts, so far as we have been able to find, with one accord, sustain the right of a judge to excuse jurors under these circumstances. The rule in Alabama was at one time to the contrary. But in *Fariss* v. *The State,* 85 Ala. 1, the earlier cases were overruled. The facts in that case were stated thus:

> The case was taken up for trial during the week for which it was set. Pending the drawing of jurors for the purpose of selecting and impanelling the jury, five several names were drawn, each of whom was of "the regular jurors summoned for the week." They not appearing, the court announced, in reference to each of them, that on their several applications they had been excused by him from attendance on the court as jurymen for reasons which the court deemed sufficient. This had been done without the knowledge of defendant, and the discharge had been ordered on Monday, the first judicial day of the week. This question was properly reserved for our consideration. (Id., p. 4.)

After referring to the earlier cases in which it had been held that the discharge of a juror under these circumstances was reversible error, the court said:

> This question, however, has been twice decided the other way, and we will treat it as settled. *Floyd* v. *State,* 55 Ala. 61; *Jackson* v. *State,* 77 Ala. 18. We do this not reluctantly, because the rule asserted in

> *Parsons' case* is exceedingly inconvenient in practice, and it is believed that it accomplishes no good result. It must be presumed that judges, in excusing jurors, act on correct principles, and discharge them only for good and sufficient reasons. (Id., p. 4.)

This decision was cited with approval in *Maxwell* v. *State*, 89 Ala. 150, 163.

In *Commonwealth* v. *Payne*, 205 Pa. State 102, 103, it was said:

> Whether the juror be excused at the trial or beforehand is also within the sound discretion of the court, though in the latter case the action and the reasons for it should be stated in open court, so that the fact that the excuse was judicially passed upon and found to be sufficient should appear on the record. It would be an unreasonable hardship on a juror seriously ill to require him to be brought into court merely to be excused, and the reasons for disqualification or excuse are so numerous that they cannot be specified beforehand or reduced to any set rule, but must be left to the discretion of the judge to dispose of as they arise.

The question of whether a juror presenting an excuse which will entitle him to be relieved of jury service shall be excused before the trial or required to attend and then be excused would seem to be an eminently proper matter to be left to the discretion of the judge. As suggested in some of the authorities cited, it would be a great hardship

to require a man who, under the Michigan statute, for instance, would be entitled to be excused on account of sickness in his family to leave his family and travel perhaps several hundred miles in order to personally present his excuse in open court. No good could possibly be accomplished by taking such a course, and no statute requires it to be taken. The reasons given in the opinion of the learned District Judge in this case for excusing before the trial jurors who would have been entitled to be excused on the trial are unanswerable. It appears that, in each instance, he promptly advised counsel of his action and the reason therefor. And it does not appear that any objection was made to this method of proceeding. It is not claimed that any man was excused who did not present a legal excuse, and it is submitted that there was no error in this action of the judge.

XXIII.

There was no error in declining to require the Government to furnish defendants with a list of witnesses.

There was a motion, supported by the affidavit of one of the attorneys, to require to be furnished the defendants a list of all the witnesses who were before the grand jury and of the witnesses that the Government expected to call upon the trial. The motion, as made, included a demand for a list of the names of all persons summoned before the grand jury who did not testify but who made statements to the special assistant to the Attorney General. The latter demand, however, seems to

have been abandoned in the brief and will not be further referred to.

The only statute requiring that a list of witnesses be furnished in any case is section 1033 of the Revised Statutes, which is as follows:

> When any person is indicted of treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be delivered to him at least three entire days before he is tried for the same. When any person is indicted of any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

There has thus been singled out cases of treason and other capital offenses, and a provision made that lists of witnesses shall be furnished.

It would seem to follow that Congress intended that such lists of witnesses should not be required in any other cases, and so this court has held.

In *United States* v. *Van Duzee*, 140 U. S. 169, 172-173, it was said:

> By section 1033, where a person is indicted for a capital offence a copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before his trial. There would appear to be a negative pregnant here, and it has accordingly been held that in cases not capital the prisoner is not entitled to a

> copy of the indictment at government expense. *United States* v. *Bickford*, 4 Blatchford, 337; *United States* v. *Hare*, 2 Wheeler, C. C. 283, 288. Nor is he entitled to a list of witnesses and jurors. *United States* v. *Williams*, 4 Cranch, C. C. 372; *United States* v. *Wood*, 3 Wash. C. C. 440.

Even in capital cases the defendant is not entitled to a list of the witnesses before the grand jury.

In *Wilson* v. *United States*, 221 U. S. 361, 375, it was said:

> Even in cases of treason and other capital offenses, under section 1033 of the Revised Statutes, the required list of witnesses is only of those who are to be produced on the trial. *Logan* v. *United States*, 144 U. S. 263, 304; *United States* v. *Curtis*, 4 Mason 232; *Balliet* v. *United States*, 129 Fed Rep. 692.

It is also settled that, unless given by some statute, the right to a list of witnesses does not exist. *Thiede* v. *Utah Territory*, 159 U. S. 510, was a capital case, but was tried in the courts of the Territory of Utah. The court held that section 1033 of the Revised Statutes applied to the Circuit and District Courts of the United States, but did not control the practice and procedure of the courts of Utah; and because the territorial statutes of Utah did not require the furnishing of such a list it was held that the defendant was not entitled to it.

In *Hendrikson* v. *United States*, 249 Fed. 34, 35, the Circuit Court of Appeals for the Fourth Circuit said:

> There is no federal statute of direct application. Section 1033 of the Revised Statutes (Comp. St. 1916, section 1699) provides in substance that a copy of the indictment and a list of the jury shall be furnished, at least three entire days before his trial, to a person indicted for treason, and at least two entire days before his trial to a person indicted for any other capital offense. As this is the only provision on the subject, it would seem to follow, on the principle that inclusion of one is exclusion of another, that if the indictment be for a crime of lesser degree the jury list cannot be required and need not be furnished in advance of the trial.

The brief in behalf of the plaintiffs in error cites but a single case on this point, *United States* v. *Aviles*, 222 Fed. 474, decided by the District Court for the Southern District of California. That case, however, by no means supports the contention. On the contrary, at page 477, it was said:

> As to the motion to require the United States attorney to furnish to the defendants a list of the witnesses examined by the grand jury, I will say the Constitution provides (Article VI of amendments) that the defendant shall be confronted with the witnesses against him. This simply means that the defendant is entitled to attend the trial

> and to hear the witnesses testify. Section 1033 of the Revised Statutes (Comp. St. 1913, sec. 1699) provides that, in a charge of treason a list of the witnesses shall be furnished to the defendant at least three entire days before he is tried, and in all other capital offenses a list of the witnesses shall be furnished at least two days before the trial. It seems that by this statute Congress has taken a stand upon this very question, and this statute points out the policy of the government in all cases. The enactment of this statute concerning the subject would seem to exclude the idea that the prosecution was required to give a list of the witnesses in any other cases.

The court overruled the motion to require a list of witnesses. He did say, however, that it was conceivable that there might be a case which presented such circumstances that it would be proper and within the discretion of the court to require either that a list of witnesses be furnished or that the case be continued. Accordingly, he concluded his opinion with this statement (p. 478):

> At this time the motion for a list of witnesses will be denied, but after the case is set for hearing, upon a proper showing made, the matter will be reconsidered.

It is respectfully submitted that no error can be predicated upon the action of the court in declining to require a list of witnesses to be furnished.

XXIV.

Objections based on the admission and exclusion of evidence.

Many exceptions were taken to the rulings of the court on evidence. Only a few are mentioned in the brief, and, following the example of counsel, we will not mention others:

(*a*) The brief (p. 149) complains that the witness Osborn was permitted to testify to conversations with Oakman and King. It is sufficient to say that this testimony was admitted without objection. A motion was made to exclude conversations of the witness with certain other parties, but did not include the conversation with either Oakman or King.

(*b*) It is complained that certain correspondence between Newberry and one Miller should have been admitted in evidence. This has been fully discussed under a previous heading.

(*c*) It is complained that certain letters of Newberry relating to the Gold Star Club should not have been admitted. This correspondence between Newberry and Claude Hamilton was objected to only on the ground that the exhibits showed "on their face that the correspondence was had in September, 1919, nearly a year after the alleged conspiracy charged." (Rec., p. 184.) This objection is of no consequence. The statement of Newberry, by way of admission, made after the conspiracy had terminated, was clearly admissible against him.

The letters contain an admission by Newberry (p. 186) that he had subscribed money to the Central Committee, and this fact alone would make the letters competent, but the letters were coupled with the verbal testimony of Hamilton that within a few days after Newberry had written he could give no more money (Rec., p. 186) he sent Hamilton more than the latter had requested; and was also coupled with evidence introduced by the defendants themselves (Rec., p. 187) that Newberry sent his personal check to cover this election expense.

(*d*) Complaint is made because the report of receipts and disbursements made by Blair, the treasurer of the committee, was admitted in evidence.

The Blair report was filed by the defendants under the Michigan law (Section 3831, Compiled Laws of Michigan, 1915), requiring a full and detailed account of every sum of money received or disbursed by a committee such as these defendants composed, together with the names of the persons from whom the money was received or paid to, the dates, etc.

(1) A public record, required by law, is admissible to prove the facts stated in the record. *Lindsay & Phelps Co.* v. *Mullen*, 176 U. S. 126, 142; *Vallejo & Northern R. R. Co.* v. *Reed Orchard Co.*, 169 Cal. 545, 571–572; *Hennessy* v. *Metropolitan Life Ins. Co.*, 74 Conn. 699, 706; *State* v. *Smith*, 74 Iowa, 580; *Chesapeake & Del. Canal Co.*

v. *United States* (C. C. A., 3d Circ.), 240 Fed. 903, 907; aff. 250 U. S. 123.

(2) The only objection made to the report was on behalf of all defendants. The report was signed and sworn to by the defendant Blair, and, in any event, would have been admissible against him.

(3) But there was no question upon the trial that the report was not alone the work of Blair, but was the joint effort of the Newberry organization.

(*a*) Defendants' counsel in the opening statement admitted this. Speaking of the Blair report he said (Rec. p. 53) that "when the time came to make up the report required by law" all the bills were not in, and efforts were made to get them in; that they did not have time to get the report in shape that satisfied them entirely; "they all worked hard and faithfully upon it. The county clerk's office was kept open after hours to receive it. One man worked so hard, the proof will show, all night long over the figures and vouchers that he fainted away and had to be taken home in a taxicab. It was in that manner and under those circumstances that that report was finally prepared and filed. There are some discrepancies and changes in the report, but it is substantially accurate, and a true and proper recitation and history of the financial transactions incident to the campaign." (Rec., p. 53.)

Mr. King testified (Rec., p. 678) that he worked upon the report; that most of the office staff helped him in its preparation; that he told Blair before the report was signed that all bills were not in so far as he knew. "The Blair report was, in my judgment, as nearly correct as could be made from the information we had."

(b) Finally, it was complained that evidence of what certain defendants had testified to before the grand jury was admitted.

Clare Higbee, a member of the grand jury which returned the indictment in this case, testified to statements made by the defendants Ladd and Mickel before the grand jury.

The introduction of this testimony was proper:

1. Evidence which a person has voluntarily given as a witness in any proceeding or investigation may be used in any subsequent prosecution or proceeding against him. (1 Bishop New Criminal Procedure, 4th ed., sec. 1255.)

2. In order that one appearing before the grand jury may avail himself of the constitutional protection against being compelled to give evidence against himself, he must claim the privilege, otherwise it is waived. It is not the duty of the grand jury to extend the option to the witness to testify or not to testify. *United States* v. *Kimball*, 117 Fed. 156; *People* v. *Lauder*, 82 Mich. 109; 46 N. W. 956; *State* v. *Comer*, 157 Ind. 611; *Jenkins* v. *State*, 35 Fla. 737; *Gardner* v. *State* (Tex. Cr. App.), 28 S.

W. 470; *People* v. *Seymour* (Ill.), 111 N. E. 1008, 1011.

3. In this case neither Ladd nor Mickel claimed the privilege, nor was either of them put in an attitude by which, without suggestion on the part of the Government, he was compelled to claim the privilege. On the contrary, each was asked if he was willing to testify voluntarily, waiving his rights, without promise of any kind, and with the understanding that his testimony would be used for any and all purposes. Each said he was willing to testify upon those conditions, and it was after that that he was sworn and testified. (Rec., pp. 623-624.)

The privilege is purely personal and can be waived. There was not simply a waiver here by failure to claim the privilege, but there was an express waiver after the witness had been given full opportunity. Wigmore on Evidence, section 2276.

XXV.

Criticism of trial judge not justified.

A good deal is said in the brief for plaintiffs in error about "the attitude of mind of the trial judge," the necessary inference being that he did not conduct the trial in a fair and impartial manner. The record wholly fails to justify such criticism. An examination of it will show that the conduct of the trial judge throughout was characterized by the utmost care and an obvious purpose to be fair and just. Nothing is shown as to

his so-called "attitude of mind" except that he wholly disagreed with counsel as to what the law was and consistently ruled in accord with the law as he construed it, instructing the jury on that subject in language that could not be misunderstood. The implied reflection on the judge is attempted to be supported in two ways. Some quotations are given from his opinion overruling the demurrer and from what he said in overruling motions to direct verdicts. It is true, in expressing himself, he used strong and clear English, as every judge should do. The complaint of counsel seems to be that his rhetoric was a little too good and his style a little too ornate. Surely, however, this can not be a serious complaint, when it requires no effort to imagine the splendid eloquence with which the arguments of which he was disposing had been presented.

The other thing mentioned in this connection is the so-called severity of the sentences imposed after the plaintiffs in error had been convicted. The fact that Congress has left to the trial judge a discretion within certain limits indicates that it was intended that the punishment should be measured, in some degree, by the character of the offense. As to some of the defendants, the judge imposed the limit. These men had been convicted of a conspiracy, which can not be said to have had any minor or unimportant nature. It was directed against and constituted an offense against

the integrity of the election of Members of the Nation's legislative body, the thing which this court has repeatedly said is essential to the safety and perpetuity of the Republic itself. The conspiracy was carried out most effectively and on a most gigantic scale. In comparison with an ordinary conspiracy to violate revenue laws or to steal property in interstate commerce, such a conspiracy is the most serious and dangerous to the Government that can be imagined. If there is any case of conspiracy, therefore, which merits the extreme penalty of the law, it is one like this, which strikes at the very life of the Nation. Certainly, therefore, no improper attitude of mind on the part of the judge is to be inferred from the fact that he concluded that the chief conspirators and beneficiaries of this conspiracy should receive the extreme, though moderate, penalty of the law.

CONCLUSION.

It is respectfully submitted that the judgment of the court below is without error and should be affirmed.

WILLIAM L. FRIERSON,
Solicitor General.
FRANK C. DAILEY,
Special Assistant to the Attorney General.

DECEMBER, 1920.

No. 559.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THOMAS H. NEWBERRY ET AL., PLAINTIFFS IN ERROR,

v.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

APPENDIX TO BRIEF FOR THE UNITED STATES.

APPENDIX.

ABSTRACT OF EVIDENCE RELATING TO EACH OF PLAINTIFFS IN ERROR.

It is the intention in stating the facts with reference to the individual defendants, to state under the name of one participant a transaction in which he was involved, and not restate it under the names of the other defendants who were active with him in the same transaction. This will avoid constant repetition.

TRUMAN H. NEWBERRY.

With reference to Truman H. Newberry, the facts relating to the commencement of the conspiracy in December, 1917, and his activities, together with the defendant Cody, in attempting to secure the services of Mr. Jay Hayden to go to Detroit and take the management of his forces is found under the Frederick Cody statement.

His connection with the trip made by Cody from New York to Detroit in February, 1918, to secure a manager, the negotiations for King's services through Cody and Templeton, and King's visit to Newberry in New York prior to his acceptance are shown in the Frederick Cody, Allan A. Templeton, and Paul King statements.

His knowledge of the intention to open headquarters, of the organization of the office force, of the employment of field and general agents, of the complete organization of the state by counties, of the personnel of the local committees, of the

weekly meetings of field men, and monthly meetings of county chairmen, the correspondence on these subjects and with reference to money are shown in the Paul King statement.

His knowledge and correspondence with reference to the publicitiy campaign are shown in the Hannibal A. Hopkins statement, the knowledge that speakers were being sent over the state in the Chilson and Ladd statements, and other activities through the various statements.

Mr. Newberry was constantly advised by Mr. King of the county and district banquets, attended by Newberry county, district, and headquarters officers. (King correspondence.) There was constant correspondence among the defendants and frequent exchanges of telegrams (206 to 219, 354 to 358, 360 to 362, 371 to 381, 385 to 404, 493 to 497, 556 to 561). Written reports were sent to headquarters and forwarded to Mr. Newberry. Mr. Newberry wrote and telegraphed the officers of the local committees, and wrote letters to committeemen and workers (96, 158, 236, 357, 371, 380, 384, 385, 394, 396, 399, 404, 436, 443, 548). The defendants Hopkins, King, Phillips, Sibben, Oakman, Andrews, Templeton, Floyd, Blair, and Emery all visited Mr. Newberry in New York, some of them many times (227, 228, 669). Cody, a frequenter of Mr. Newberry's office in New York (67, 68, 75), made visits each month to Detroit (140). Large bundles of letters with a New York date line, ready for Mr. Newberry's signature, were prepared in the Detroit headquarters and forwarded to Mr. Newberry's box number in New York (79). He complained about the size of the envelopes sent him (699, 670).

When Mr. King was in New York, packages of mail were forwarded him to Mr. Newberry's box number (148).

An item of expense amounting to $5,781.25 was suggested by Mr. Newberry, and he took a very active part in making the expense.

In a letter dated March 7, 1918, to Mr. King, Mr. Newberry stated that a Mr. Clippert, who was with him on Sunday, suggested the moving-picture business as a very satisfactory method of publicity, and Mr. Newberry said he was "heartily in favor of it." He said further: "I know several people here prominently identified with this particular business, and if you think it desirable to follow up sooner or later, I can put you in touch with the people who are in control of the distribution of all films" (685).

The suggestion of Mr. Newberry was adopted. On April 17 King wrote Newberry, "I am wondering if it could be arranged so that I can get in touch with some of the moving-picture people Saturday" (707). The defendant Phillips went to New York and looked after the arrangements for procuring the moving pictures. He was in conference with Mr. Newberry and spent ten days or two weeks on one trip in connection with the film, and made more than the one visit (69, 77, 78, 83, 227, 228, 570, 571).

Phillips purchased about 800 feet of an old film showing a review of the United States Navy. The subtitles were changed so as to make the pictures applicable to the propaganda for which they were intended. Mr. Phillips not only purchased the old film, but employed a moving-picture company to take 125 feet of new film, with Mr. New-

berry as the central figure. On a Sunday he went to a wooden battleship, a naval recruiting ship located in New York, where he posed (570, 571, 50).

The moving picture was prepared by the International Film Service Co., under a written contract with the Newberry Senatorial Committee, calling for " approximately one thousand feet, depicting and describing the growth and development of the United States Navy." The contract called for $1,000, and fifty dollars for each extra reel. Twenty or twenty-one copies of the film were made and delivered to the Newberry Senatorial Committee, which paid the Film Co. $2,031.25. This was for the old film, the new films made of Mr. Newberry, and the extra copies (570, 571).

The old and new films were combined in one picture and sent to the Newberry Senatorial Committee at Detroit. It was called " Our Navy."

Mr. Phillips then called upon the Dawn Master Play Co., of Detroit, and stated that he had a one-reel subject that was very patriotic and very interesting and asked whether the Company had facilities to handle it. He inquired whether the Company was in a position to give good and quick service and asked the price of distribution. Mr. Phillips later delivered about twenty copies of the film to the Company, told them to distribute " Our Navy " to the theaters throughout Michigan, and agreed to pay $3,750.00 for the service. The Company sent out six or seven men, placing the reels in the different picture houses, and the picture was shown in about 250 houses. The

picture houses paid nothing for the film and were paid nothing for showing it (430, 431, 432).

This expense of $5,781.25 for the making and distribution of the film covers only part of the expense in connection with it. The expense of the defendants to New York, the expense of dispatching a personal agent with the film (230), of telegrams to local officers of the Newberry organization, announcing the coming appearance of the film (216, 354), of local advertisements boosting the exhibition of the picture (230, 351), etc., are not included.

No part of the $5,781.25 is shown or accounted for in the Blair report (253 to 280).

Mr. Newberry paid the hotel bills of various defendants who came to see him relative to the campaign (227, 228); he made and paid subscriptions in connection with the campaign, and among others to a clipping bureau for triplicate sets of clippings concerning himself (and some of Mr. Ford), one to be sent himself, one to the defendant Cody, and one to defendant Phillips, a publicity man, at Detroit headquarters (525 to 530). He made church subscriptions after asking King how much he should give (699), and with the letter making the subscription would say: "I appreciate very much your friendly interest in my campaign" (436).

Large sums of money were paid throughout the state for circulating Newberry nominating petitions. Men were hired for this purpose at Detroit headquarters (171, 172) and by the Newberry County chairmen and secretaries generally. In instances a lump sum was given the circulator, sometimes he was paid so much a petition, and

sometimes five or ten cents for each name secured. Sums varying from $5 to $200 were paid (171, 172, 225, 226, 248, 351, 434, 555, 284, 285, 469, 470, 471, 472, 504, 505, 509, 510, 543, 544, 514, 515, 565, 566, 497, 498, 554, 569).

Mr. Truman H. Newberry wrote a letter of thanks to the signers of his petitions, as follows:

> I note with pleasure your name on one of the petitions nominating me for United States Senator and wish to thank you for this expression of your confidence in me (96)

or words of similar import.

Sometimes he addressed these letters to men who had not signed his petition (240, 322).

Instances of the manner in which the defendants expended money to secure union labor help are set out under the Floyd statement.

William Bailey, president of the Detroit Federation of Musicians, went with Fred Castator to the Newberry Senatorial headquarters and had a conversation with Mr. King. They asked Bailey to interest himself in the Newberry campaign, and said that the extent of his activities would be to make speeches to different labor organizations. Mr. Castator said that his pay would be $40.00 per week. Later Bailey received a letter from Mr. Newberry, asking him to interest himself in Mr. Newberry's campaign (304).

In the fore part of September, 1918, the defendant William Wilson called upon Edward F. Plunkett, of Muskegon, Michigan, president of the Central Trades and Labor Council. Wilson asked Plunkett how things were looking for Mr. Newberry in Muskegon County; said that Plunkett

had been recommended to him and that there was plenty of money in the campaign and he would be paid for anything he did; that they did not expect him to work for nothing. Plunkett told him that the matter would have to first be taken up with the delegates of the Central Trades Council. Later, during the same week, the defendant Brock, asked Plunkett if he could make a talk before the delegates of the Central Trades and Labor Council and was refused the privilege until it had been taken up with the delegates. Brock asked him to take up the matter in regard to his speech, and whether the Central Trades and Labor Council would make up their minds to support Mr. Newberry. He said that the Trades Council of Grand Rapids had endorsed Mr. Newberry, and he was led to believe that the Trade Councils throughout Michigan were making the endorsement. He further said, "We wouldn't expect you to devote your time for nothing; you will be amply paid for any work that you do" (438).

William H. Stewart was a member of the typographical union, and a delegate from that to the Trades and Labor Council, which was the central labor body of Kalamazoo. The defendant Farrell, had some talks with Stewart with reference to work in the interest of Mr. Newberry in the Trades and Labor Council, and asked that that body endorse a resolution favoring Mr. Newberry's candidacy for Senator. On one visit he took $10 from his pocket and asked Mr. Stewart if he would take that and purchase a box of cigars for the meeting of the Trades and Labor Council and to state to the body that it was sent by Mr. Newberry's friends, or in his interest. The cigars were

purchased and duly presented by Mr. Stewart, with the statement that they were sent up by Mr. Newberry's friends.

Prior to the meeting, the defendant, Wilson, in company with Farrell, had a talk with Stewart, in the course of which Mr. Wilson stated that a resolution endorsing Mr. Newberry had been passed in Muskegon, Grand Rapids, and another city; said he thought it would be easy enough in Kalamazoo, and stated he expected it would go over in Jackson that night, and that he was going from Kalamazoo to Jackson for that purpose (571 to 573).

The idea of securing help from unions was discussed in the correspondence between King and Newberry beginning prior to the middle of March.

In a letter dated March 13 to Paul King from Mr. Newberry he referred to the luncheon he had had with John Mitchell, who was "very well known in labor circles," and "one of the constant advisers of Mr. Gompers." He stated that Mr. Mitchell might visit Detroit and said: "I shall probably see him again, or at least communicate with him also that when he goes out there you will be able to make any suggestions to him that you think may be helpful" (689).

On March 8 he wrote Mr. King about the luncheon with Mitchell, and said with reference to Mitchell: "I think later he may communicate with some of his labor associates in Detroit, or he may be out there on some other business" (688).

On May 11, 1918, King wrote Newberry that the State Federation of Labor had not endorsed Governor Osborne; that a meeting was held in Port Huron two weeks prior, and "we succeeded in blocking an endorsement"; that the matter would

be taken up again June 30, when they hoped to secure an endorsement themselves or prevent anyone else from doing so (732).

During the campaign persons organized what they called a Gold Star Club in the interest of Mr. Newberry. They got people who had lost sons or relatives in the world war to sign a letter addressed to each soldier's family, and later found themselves $330 in debt. Mr. Claude Hamilton wrote and asked Mr. Newberry for the money. On September 18, 1919, Mr. Newberry replied to the request, acknowledging his appreciation of the Gold Star Club stating that he had written most of the members and saying that he had subscribed to the State committee all he could subscribe under the law and hoping " that some friend will be found who will make up " the deficit. A few days later Mr. Newberry sent to Mr. Hamilton his personal check for $350.00 (183 to 187).

As set out in the Paul King statement the checking deposits alone of the Newberry committee in the City of Detroit, amounted to $196,940.93. Contributions amounting to $178,856 are shown by the Blair report (283). The report shows that John S. Newberry contributed $99,900 (281 to 283). John S. and Truman are brothers (43). He authorized his bank account to be used for the campaign (44, 311, 312). The evidence fairly shows that Truman H. Newberry's account was used the same as his brother's. Included in this is the correspondence on money set out in the King statement and the telegram from defendant Smith, manager of the Newberry estate, sent a month before the primary referring to a telephone conversation in the morning and stating, that he

had misinformed him of "the date of closing regular expenses. Should have said August 27. The circular work, advertising, clerical help, postage, and all regular overhead expenses will naturally continue until primary. Have written" (173, 219).

The expenditure which was being made by the defendants was publicly attacked on August 17th. A Grand Rapids newspaper had sought information from the defendants, and on August 10th King had dispatched Emery to New York (562 and telegrams Newberry to King and King to Newberry, August 10, p. 882). Mr. Newberry wired the editor on the 11th, and on the 14th the editor telegraphed Mr. Newberry with reference to the situation, as is shown by the following telegram from Mr. Newberry to Mr. King:

> August 14, 1918. Paul King, Ford Bldg., Detroit, Mich. Received nine to-night from Grand Rapids. Quote. Thanks for your wire of the 11th. I am still waiting to hear from your committee at Detroit, from which no word has come as yet. I feel that this matter must be given earliest possible published attention. (Signed) A. A. Vandenburg, Publisher, Grand Rapids Herald. End of quote. Please advise me when your answer was mailed. Truman Newberry (883).

Mr. King answered this telegram the next day:

> Your telegram received. Letter from committee to Vandenburg mailed out to-day (883).

On August 17th King telegraphed Newberry:

> Vandenburg had our correspondence front page Herald to-day with sarcastic

editorial. I understand stating that our letter did not cover point, but supposed people would have to be satisfied. Have not been able to secure copy of paper. Do not think that this will be serious. Shall pay no attention to it. Splendid reports to-day from counties in all parts of the State. News says nothing. Hope you will not worry. Best regards (890).

On August 20th King again telegraphed Newberry:

Everything all right here. Vandenburg had story to-day first page showing you have big lead over other candidates. No editorial opinion, seems to be that his editorial Saturday will help more than hurt. People are saying sour grapes (892).

On the same day, August 20, 1918, King wrote Newberry:

I had a long talk with Charlie Cameron, of the Journal, last night and told him the whole situation and disabused his mind of the idea that the question of expenditure is an issue in the campaign, explaining to him the animosity of the Grand Rapids Herald, the Charlotte Republican, and the Escanaba Journal. This morning he called me up to say that Lieutenant Governor Dickinson had put out a statement on the Associated Press wire calling attention to our advertising expenses and money spent for postage, speculating on the number of workers, and calling upon you to withdraw. He asked me if I had any statement to make, and I told him I certainly would not waste any of his valuable space by replying to a statement from Mr. Dickinson. I do not believe there

will be any discussion locally; but if there is, we will take care of it along the line of our Grand Rapids letter (896 and 897).

In the same letter he inclosed the articles which had appeared in the Grand Rapids paper (896).

PAUL KING.

Paul King was the director of the defendants' activities. It is necessary, in stating what the other defendants did, to show the acts of King, and in order to avoid repetition those acts will not be repeated here, but reference is made to the other statements. His introduction into the conspiracy is shown under the Frederick Cody statement, and many of his subsequent acts appear in each of the other statements.

Soon after Mr. King became executive chairman he telegraphed Mr. Newberry from Detroit to New York, acknowledging receipt of telegram from Mr. Newberry. In this telegram he informed Mr. Newberry that he had selected headquarters for the Newberry committee in the Ford Building, Detroit, and stated that the headquarters would be ready on the following Monday. He further informed Mr. Newberry that he was perfecting an office organization (219).

The offices which Mr. King telegraphed Mr. Newberry he intended to open on Monday, March 4th, were opened about the time indicated in the telegram, and consisted first of a suite on the third floor of the Edward Ford Building. Later other rooms were added on other floors of the same building (76, 77, 78, 82, 146, 147, 680). The offices of the Newberry Estate in Detroit, of which the defendant, Frederick Smith, was manager, were

on the 12th floor of this building, and the private offices of Mr. Truman H. Newberry were at the disposal of and often used by the defendant King (79, 172, 311, 670).

The organization was detailed and elaborate. There was a chairman, executive chairman, secretary, numerous assistant secretaries, publicity director with assistants, speakers bureau, a Wayne County (Detroit) department. About 35 stenographers and typists were required for the work. Two shifts of employees were required, a day shift and a night shift.

The State of Michigan was thoroughly organized and constant touch was kept with all parts of the State. Michigan was parcelled into districts, and what they termed a field agent was hired and placed in charge of the district. These agents were for the most part employed by Mr. King in person and their duties embraced the complete organization of each county (680, 681, 682). Each field agent was paid a salary and most of them received $75.00 per week (681, 268, 276, 277, 279, 280).

In each county of their respective districts, it was the duty of the field agents to secure a chairman and a secretary to act in connection with the headquarters at Detroit, and later with either the headquarters at Detroit or Grand Rapids according to the location of the counties (681, 159, 226, 133, 486, 168, 137, 138, 160, 519, 192, 340).

The various field agents went into their territory to negotiate with and secure a chairman and secretary and effect a thorough organization in each county in Michigan with the exception of

Chippewa County, which was the home of ex-Governor Osborn.

Every county in the State with the exception of Chippewa was organized (752, 746 to 771). The local organizations carried on their work in connection with the Truman H. Newberry Senatorial Committee at Detroit and Grand Rapids. On March 7, Mr. King informed Mr. Newberry that he intended, during the month, to form the nucleus of a Newberry committee in every county (686). Mr. Newberry was informed of the plan of having field agents and county managers, and on April 15, 1918, wrote Mr. King with reference thereto, as follows:

> The minutes of your weekly meeting are intensely interesting, and I hope you will send me copies of them hereafter. The plan of having your field men in each Monday and the county managers monthly should enable you to keep fully informed as to the progress of your efforts. * * *
>
> I am glad to have the maps and the detailed reports from each county, which I shall be able to consult frequently as matters in various localities are referred to in your correspondence.
>
> All the men you have selected seem peculiarly adapted for their various districts, and I am particularly glad that you have found an opportunity to use Jim McGregor, which I know will please Mr. Warren, his friend (704).

On April 16, Mr. King wrote Mr. Newberry: "We have our meeting of field men today and I will send you a report tomorrow" (706).

On May 2, Mr. Newberry wrote Mr. King: "I am returning today by registered mail the

book of field reports which you left here, and which I expected to have written up from the notes you had with it. However, time has not been found in which to do it, and I gladly adopt your suggestion to exchange this book for a book brought up to date, and repeat this operation monthly or whenever you think desirable" (709).

On May 6, Newberry wrote King: "I will be interested to have your report after you have been home and looked matters over in your office. I suppose you will soon have your monthly meetings again, and the result of them I await with much interest" (716).

On June 17, King informed Newberry that he had just held a conference with the field men (792).

In speaking of Gladwin County, in a letter of August 6 to Mr. Newberry, Mr. King said: "This county had not been organized at the time of my trip, and my visit was of a preliminary nature. I have since sent a field man into the county (ex-Senator Corliss) and it is now organized" (865).

Mr. Newberry had the most intimate knowledge of the county organizations. During the entire campaign he was kept in constant touch with them by letters, written reports, telegrams, telephones (684 to 902, 165 to 167), and many personal visits from King and other defendants (227, 228, 69, 77, 78, 669). He was furnished a list of the officers in the various counties (746 to 771). He was told in letters who the chairman, secretary, or manager was. King visited practically every county in the State, and wrote Mr. Newberry the most detailed accounts of the situation in each county visited—

the work of the local officers, of the committee, the names of the men who were handling the Newberry petitions, the standing of other candidates, the names of the men seen, their occupations, whether they were for or against Mr. Newberry or neutral, the newspaper situation, the chances of carrying the county. He told him the difficulties encountered in counties and the efforts to meet them (684 to 692). Reports of field and general agents detailing the situation were sent him (165 to 167, 847 to 854, 900 to 902).

On April 6 Mr. Newberry wrote Mr. King:

> At the present writing I feel that you have secured for my candidacy what might be described as the inside track for the nomination (701).

In a letter May 18 to Mr. King Mr. Newberry refers to various letters received from him and says:

> All of which give me a most comprehensive view of the hard work you have been doing in the Northern Peninsula. * * * I have just read over again your letter of the 16th giving me a summary of your whole trip, and once more offer congratulations on the results (7, 738).

On May 30 Mr. King wrote Mr. Newberry: "We are making good progress, I think, and the preliminary organizations in the counties are practically complete." In the same letter he spoke of a few troublesome counties, and said:

> I am going to clean up on all these counties next week. We have good men in each county who will be with us, and it is merely a question of getting them together. I will

> take them in their order, one after the other, and close up. When I come down I will bring a detailed report on each county (743).

On July 27 Mr. King wrote Mr. Newberry: "We are going after every county and not slighting any" (845).

On July 9 Mr. Newberry wrote Mr. King:

> From every one of your letters I gather a broader view of the immense amount of organization work you are personally developing all over the State (826).

In the Blair report (252 to 283), which was prepared under King's supervision (677, 678), the total disbursements of the organization were stated to be $176,568.08 (280).

The evidence shows expenditures largely in excess of $200,000.

King, as chairman of the committee, opened an account in the Commonwealth Savings Bank, of Detroit, in March and deposited $5,083.73 (117, 666).

The Newberry Senatorial Committee in May opened an account in the same bank, and there was deposited and expended the sum of $178,857.20 (117 to 123, 253 to 280).

The Committee had a deposit of $78,000 in the Union Trust Co. of Detroit, which was checked out and $65,000 of it placed in the Commonwealth Savings Bank, and went to make up the $178,857.20 deposited in the latter bank. But $13,000 represented by two checks of $5,000 each and one check of $3,000 never reached the Commonwealth Savings Bank (127 and 119).

The total amount deposited by the Newberry Committee in Detroit banks, subject to check, and withdrawn was:

Commonwealth Savings Bank (Paul King, Chairman)	$5,083.73
Commonwealth Savings Bank (Newberry Senatorial Committee)	178,857.20
American Trust Co. (Frank H. Blair, Treas. Newberry Senatorial Committee)	13,000.00
Total	196,940.93

This was expended.

The Blair report, filed September 6, says that there are no unpaid debts or obligations (283).

Many debts and obligations were paid after the filing of the report, among which were the following:

Amounts paid newspapers, not including the Detroit newspapers, for which the advertising was contracted for by the Campbell-Ewald Co	$1,462.94
The Campbell-Ewald Co., which received in November (574, 575.)	2,200.91
Difference between amount shown by report to have been paid and amount actually paid the Curtis-Hyde Co. for mimeograph letters (622.)	4,280.91

This does not approximate the amount actually spent by King and the other defendants. It does not include the sums paid in financing the campaign of James W. Helme, candidate of an opposition party; or the sums ($20,000 or $25,000) paid Milton Oakman, the large moving-picture bill, and numerous other items (253 to 280). No consideration is here taken of the cash kept in vaults, and distributed from there (see Emery statement), nor the accounts kept by Floyd in Grand Rapids banks (see Floyd statement).

The evidence does not show directly who contributed the excess spent over the amount shown in the Blair report.

The report which the defendants filed with Milton Oakman, county clerk of Wayne County (Detroit), shows the expenditure of $176,568.08. By the admissions of the report they spent $12,301.60 for mimeograph letters, $23,562.76 for printing, and, according to their report, $21,-099.18, and to their books, $23,342.45 for postage. "Stationery, supplies, and miscellaneous" was shown by their books to have cost $9,144.89, and by the report $8,541.24. The amount shown in their books for salaries and wages is $35,435.89, and in the report $33,997.15 (600, 601, 253 to 280).

The books of the committee show payments of $45,163.33 for newspaper advertising, and the Blair report shows $45,728.08, with an additional sum of $702.77, which was stated in the report as "Expenses of County Committee in connection with newspaper advertising" (600).

The report shows that traveling expenses of employees amounted to $9,104.52 (279); that expenses for copying election registers and canvassing voters amounted to $4,875.38 (280); that $1,356.04 was paid to one man for furniture (278), and that other items of furniture were purchased in the sums of $63.70 and $102.50 (277); $27.60 was paid for curtains (278); $54.76 to a clipping bureau (275); $27.42 for maps (276); $697.20 for a multigraph machine; $2,663.88 for an addressograph and plates; $20.85 for laundry (278).

Among other things for which the Newberry committee agents, headquarters and county, spent money was, for voters' lists (161, 280), canvassing voters (168), ascertaining opinion and sentiment of electors (175), work at polls, passing out cards at polls (322, 416, 483, 507), taking a friend to

lunch (221), gasoline (84, 170, 519), oil, auto hire (93, 547, 548), auto repair (84, 170), cigars (284, 454, 484, 503, 565, 572), soft drinks (284, 350), liquor (484), newspaper print paper (221, 222), exchange of work between neighbors (417), dental bill (287), piano rental (576).

They spent money for particular work among colored people (591), Indians (497, 480, 617, 618), lumber jacks (749, 752), factory workers (91), soldiers (898), sailors (369, 370, 898, 899), various lodges (524, 475, 476), and labor unions (99 to 103, 304, 438, 439, 571 to 573).

There were many occasions when money was "slipped" into men's pockets (516, 573, 498, 520, 511, 618, 249, 250, 426, 411). Money was given to a member of the election board (479, 480).

Men would be seated in Mr. King's private room in headquarters talking to him, when a man would enter and lay a sealed envelope in front of the visitor. This envelope was put in his pocket by the visitor, and later when he examined it, he found currency—from fifty to four hundred dollars (133, 134, 324, 545).

George H. Brownell, in the spring of 1918, was living in Detroit, and helped to promote the Boys' Working Reserve, the purpose of which was to put city boys on farms. Mr. Brownell told Mr. King they wanted the Newberry Senatorial Committee to pay for two advertisements in two large farm journals of Michigan; that it was good publicity for his candidate. The committee paid $700 or $800 for the two advertisements. Mr. Newberry's name was mentioned in connection with the adver-

tisements. Before Mr. Brownell left he and Mr. King made an arrangement for the former to go to work for the Newberry committee. The salary was not fixed, and Brownell told Mr. King he would see him again about the matter of salary (567, 568).

Alexander Bath, of Lansing, formerly lived in Mackinac County. Mr. King asked him to go to his former home in the interest of Mr. Newberry, and gave him to understand that he would be taken care of. A few days afterward he received a check for $100.00, and later Mr. King told him he would be allowed $5.00 per day, and in passing Mr. King's office in headquarters a gentleman handed him a sealed envelope which he found contained $50.00 (545).

Field Agent Corliss talked with Neil R. Walsh, of Shiawassee county, about taking employployment with the Newberry committee. Corliss said he thought Walsh would be a good man to handle the campaign for Mr. Newberry and Walsh said he would do so if he could get reasonable compensation. Corliss told him there was a committee that he expected would look after that. Later he talked with somebody from Newberry headquarters who he thinks was Mr. King. Walsh was made secretary of his county, received $525, and spent about $100 (485 to 487).

Mr. King wrote Mr. Newberry on August 20 that he " received a *voluntary contribution* to *our campaign fund* this morning from one of the leading business men of Grand Rapids " (896).

The subject of money, more or less veiled, was mentioned sometimes in the correspondence between Mr. Newberry and Mr. King.

In the December talk among Newberry, Cody, and Hayden the amount of money spent in the Herrick campaign in Ohio was discussed (61).

On March 8 King wrote Newberry:

> I am going to Cleveland to-night for the purpose of talking with the man who successfully managed Herrick's campaign for the Senatorial nomination, under conditions very similar to ours and I think I will be able to pick up some pointers (687).

On April 11 Mr. King wrote Mr. Newberry with reference to possible candidates for Senator and a conference at the home of Ben Hanchett, and said:

> At which I have confidential information, Senator Smith, Wm. Judson, ex-Congressman Diekema, and Arthur Vandenburg were present, they tried to make Diekema think he ought to run, *but he told them he did not have the price* (702, 703).

On August 19, 1918, Newberry wrote King:

> On the train from Boston last night, there was a *financial* friend of William Alden's who was disgusted at his attitude and made some very *practical suggestions* as to how the attitude of William's paper could be secured. I will tell you about this man when I see you (891).

In a letter of August 9, Mr. Newberry, in a letter to Mr. King, referred to Governor Osborn and said:

> If his subsidence at this time would insure me success, they might send for him and make arrangements, as in other cases, which would insure his being looked after in case of a Republican presidential success.

> There is much more about Osborn's present plight I will tell you when I see you. The statement that he is *short of ammunition* is an absolute fact. *Whether or not this was a feeler I will leave you to judge when I talk to you about it* (881).

On August 20, Mr. King wrote Mr. Newberry:

> I had a long talk with Charley Cameron of the Journal last night and told him the whole situation and disabused his mind of the idea that the question of expenditure is an issue in the campaign. * * * This morning he called me up to say that Lieutenant Governor Dickinson had put out the statement on the Associated Press wire calling attention to our advertising expense and money spent for postage, and speculating on the number of workers and calling upon you to withdraw (896, 897).

On August 15, Mr. King wrote Mr. Newberry:

> As is natural, many of the reports that I am getting now indicate "grief" of various kinds and I am straightening out the troubles as fast as they come on (888).

On July 28, the defendant, Fred P. Smith, an employee of the Newberry estate, who handled in currency the contributions made from the Newberry estate offices to the Newberry Senatorial Committee, had a talk with Mr. Truman H. Newberry and gave him the wrong information, and during the day telegraphed him at New York as follows:

> I misinformed you this morning the date of close of regular expenses. Should have said August 27. The circular work, advertising, clerical help, postage, and all regular overhead expenses will naturally continue until primary. Have written (173, 219).

The senatorial primary in Michigan was held on August 27.

FREDERICK CODY.

In 1918, the defendant Truman H. Newberry was located in New York (60, 664, 669), where he was attached to the Third Naval District, with the rank of Lieutenant Commander (75).

The defendant Frederick Cody formerly resided in Michigan, but some years ago moved to New York, where he was living during 1917 and 1918 (60, 74).

During the time involved, Mr. Newberry and Mr. Cody were closely associated (58 to 62, 67, 68, 73, 75). As early as December, 1917, they discussed the selection and employment of a manager to go to Detroit, establish headquarters, and take charge of the campaign in Michigan.

In their conversations (58 to 62), it was agreed by both that Mr. Cody should proceed to Washington and endeavor to employ Mr. J. C. Hayden, Washington correspondent of the Detroit News, as the manager of the Newberry force during the campaign (58 to 62).

In accordance with the arrangement, Cody went to Washington and called upon Hayden. He told Hayden that he came to him on behalf of Mr. Newberry and that Newberry wanted Hayden to manage his campaign in Michigan. Mr. Hayden refused, but Cody insisted and said he would not take "No" for an answer. Cody offered him a salary of $500 per month, and told him several times that he thought the matter of compensation could be arranged. He said that Mr. Newberry was very wealthy, and related the important interests Mr. Newberry had (58 and 59).

Cody returned to New York and within a few days called Hayden on the telephone. He was very insistent about Hayden's taking the management of Mr. Newberry's campaign in Michigan and told Mr. Hayden in a telephone talk, during the holidays, that Mr. Newberry wanted to see Mr. Hayden over Sunday, and requested that he go to New York. It was arranged that Mr. Hayden was to go to the Biltmore Hotel and that Mr. Cody would meet him there (59, 60).

Pursuant to this arrangement, Mr. Hayden went to New York where he was met at the hotel by Mr. Cody. Cody and Hayden had a talk in the latter's room, and Mr. Cody said they were still very anxious for Mr. Hayden to take the position of campaign manager. They talked at some length about this matter, and then went to Mr. Cody's home on Riverside Drive. In the afternoon Cody took Hayden to the Gotham Hotel to see Mr. Newberry, which at that time was Mr. Newberry's home (60).

In the conversation which followed, Mr. Newberry said he had been urged to run for United States Senator, and that Hayden had been suggested to him as a man who should be associated with the campaign. Mr. Hayden told him that he could not consider the proposition (60).

Mr. Newberry asked Hayden to apprise him with respect to the campaign (60).

Hayden suggested the advantage of securing the Detroit support, and Newberry asked how that could be done. Hayden said to see the various political leaders, particularly Mayor Marx, head of the city organization, and Milton Oakman (defendant), head of the county organization (60, 61).

During the conversation Mr. Hayden told Mr. Newberry not to conduct a "barrel campaign," and with this Mr. Newberry said he agreed (61). After Hayden made his observations against the use of large sums of money to procure office, the plan of securing him as manager of the Newberry campaign was entirely dropped both by Mr. Newberry and Mr. Cody (61, 62). Prior to that time they had been very insistent upon his acting, had been to Washington to secure him, had telephoned him, had had him come to New York for a conference, and had told him in that identical conversation that they would see him again and attempt to induce him to take the position (58–62).

Neither Mr. Newberry nor Mr. Cody ever again mentioned the subject of Hayden's taking the campaign management of Mr. Newberry (61, 62).

In the conversations with Cody, Cody informed Hayden that he did not expect to take an active part in the campaign in Michigan; that, of course, he would be connected with it, but would work from New York (61).

Prior to the arrival of Hayden in New York, Cody had arranged for Hayden's hotel accommodation, bought his return ticket to Washington, paid him in cash the amount Mr. Hayden had expended to reach New York, and settled his hotel bill (62). This expense, in searching for a manager for the campaign, like many other items of expense, was not accounted for in the campaign report of receipts and expenditures which was filed by the defendants (252 to 280).

Within approximately two weeks after Hayden had suggested that the support of Mayor Marx and Milton Oakman be secured, both Marx and

Oakman were in New York in conference with Newberry and Cody (67, 73, 227). Milton Oakman's hotel bill was charged to Cody (227), and was not included in the report of campaign expenses (252 to 280).

About February 10, 1918, Cody made a trip to Michigan on the hunt for a State-wide manager. He arrived in Detroit about February 11 and called in the men over the State known as the "Cody men." A conference was held for the purpose of considering who should be made manager, and it was unanimously agreed that the defendant, Paul H. King, should be secured (141, 662, 663, 556).

Cody and Templeton talked with King (662, 663). Templeton telegraphed Newberry with reference to the conference and the necessity of securing King (556).

After the termination of the conference of the Cody men, and on the same day that Mr. Templeton sent the telegram to Mr. Newberry, Cody returned to New York (141), and in the meantime King found out that he could not leave Detroit in time to arrive in New York on Saturday as he had agreed. Thereupon he sent a telegram to Fred Cody stating that he would arrive Sunday morning. Mr. King arrived in New York on Sunday, February 17, and remained two days in conference with Mr. Newberry and Mr. Cody (227). He returned to Detroit, and within a few days commenced the work of the campaign.

In January Cody telegraphed Andrews to meet him in Detroit (372), and on February 26 he met defendants Andrews and Templeton in Chicago (372, 373).

Cody made trips from New York to Detroit during each month of the campaign (140, 141). In September, on one of these trips, Mr. Newberry telegraphed him: "Many thanks for your cheering bulletin. Keep me posted" (217).

Mr. Newberry made several payments to a clipping bureau for service to Mr. Cody of clippings concerning Newberry (528, 529).

In January, 1918, at the Biltmore Hotel, the defendant Cody, in speaking of the Newberry candidacy, said to James Swinehart that it would be a great time for the boys in Michigan, because they would spend a barrel of money (67).

In April, in speaking about the campaign, Cody told Swinehart that he had been out in Michigan; that the lid was off and the sky was the limit (68).

ALLAN A. TEMPLETON.

The stationery of the Newberry committee carried the name of Mr. Templeton as General Chairman of the committee (94). He accepted the position at Mr. Newberry's request (69), and was one of the parties who took an active part in securing Mr. King to become executive chairman of the committee.

When the defendant Cody made a trip from New York to Detroit in February to secure a state-wide manager, Mr. Templeton was in conference with him and others and in company with Cody had talked with King (662, 663), and on February 13 telegraphed Mr. Newberry that he had spent two days in conference with Cody men from out in the state and city, and that it was the unanimous opinion that Paul King was "quite

necessary." He informed Mr. Newberry that King would be in New York Saturday and Sunday and reported "satisfactory progress" (556). King had agreed to go to New York to see Mr. Newberry at the time stated in the telegram.

Templeton was the first person King advised that he would take part (665).

The money which King deposited in the Commercial Savings Bank, of Detroit, as chairman, and which were the first moneys contributed, came from the defendant Templeton, on checks payable to Mr. Templeton and endorsed by him (666). King visited Newberry with Templeton on three or more occasions (227, 228). On April 17 King wrote Newberry that Templeton, Floyd, Hopkins, and King would arrive in New York on the following Friday to remain Saturday and Sunday (706). Mr. Templeton was in Detroit headquarters often, corresponded with Mr. Newberry, and was often spoken of in correspondence between King and Templeton with reference to various matters the three had considered or were to consider (690, 695, 697, 698, 701, 708, 722, 738, 741, 777, 794).

Templeton had a meeting with Cody and Andrews in Chicago on February 26 (372, 373).

The defendant Templeton called upon Francis O. Lindquist in Grand Rapids with reference to the Newberry campaign. Lindquist suggested that he would frame up a campaign for Mr. Newberry if the latter would endorse the pure-merchandise bill which Lindquist had introduced in Congress. Lindquist prepared a circular embracing a eulogy of the legislation and an endorsement of Mr. New-

berry, and took it to Detroit, where he met Templeton and King. At the meeting he dictated a letter of endorsement by Newberry of the legislation proposed, which was incorporated in the body of what had been previously written. He also prepared a pledge card, to be mailed with the circular, reciting that the writer, believing in the necessity of a law to prevent profiteering through the misbranding of merchandise, and that Truman H. Newberry, if elected, would urge its enactment, pledged his support. There was also a card with Mr. Newberry's picture in the map of Michigan, with the wording, "Newberry a war measure for the protection of every man, woman, and child in the state of Michigan." On the reverse side there were cryptic sentences like "A Law that will reduce the High Cost of Living" and "A Law that will Help Win the War" (306 to 310).

King wrote Newberry on May 22 that he and Templeton were working on an arrangement with Lindquist; that he had a mailing list of over 100,000 active men all over the state and they were "going to have him get busy with it" (741). On May 22 Mr. Newberry answered the letter, saying he was much interested in the details, etc. (742). On May 30 King wrote Newberry that on the following Sunday "we might discuss the Lindquist matter, which appeals to both Allan and myself as being a good thing" (744, 745). Mr. Newberry signed the letter Lindquist had dictated, and approximately 100,000 copies of the literature were mailed out. Lindquist presented his bill for $4,557.00, $500.00 for his services and the balance for printing, stamps, electrotypes, etc., and the defendant Emery paid the bill (306, 307).

MILTON OAKMAN.

In the December, 1917, conversa[tion between] Jay G. Hayden and the defendan[ts Cody and] Truman H. Newberry, Mr. Hayden [suggested the] desirability of securing the servic[es of Mayor] Marx and Milton Oakman, respect[ively, at the] head of the city and county org[anizations of] Wayne County (61).

On January 15, 1918, a little m[ore than two] weeks after Hayden had made the su[ggestion, Mr.] Marx and Mr. Robert Oakman, broth[er of the de-] fendant, Milton Oakman, both of De[troit, arrived] in New York and were quartered at [the Biltmore] Hotel for several days, during whi[ch time they] held conferences with Newberry and [Cody (67, 73,] 227). On January 17th they had a [long-distance] telephone conversation with the defe[ndant, Milton] Oakman, then in Detroit, and on t[he next day,] January 18th, Milton Oakman arri[ved in New] York where he was also in conferen[ce with New-] berry and Cody (227, 73).

Milton Oakman stayed at the Bil[tmore Hotel] from January 18 to January 21, ra[n up a hotel] bill of $128.75, which was charged to [Cody (227)] and never reported as a campaign ex[pense (225 to] 280).

Milton Oakman had been supporti[ng ex-Gover-] nor Chase S. Osborn in the race for U[nited States] Senator (444), but after the confer[ence in New] York he became an active Newberry [leader (72,] 82, 88, 89, 92, 451, 454, 455, 457, 4[34, 533, 534,] 689, 704, 739, 824, 826, 830, 896).

The defendant Oakman told Hen[ry A. Mont-] gomery, who was interested in Mr. O[sborn's cam-]

paign, that he (Oakman) was for Osborn and later told him that he did not intend to support Osborn but intended to support Newberry. He told Montgomery that he was sorry he could not be with Osborn, but that he could not afford to be; he would have to be with Newberry because of the money there was in it. In another conversation Oakman asked him if he was getting well paid for being with Osborn, and Montgomery said he was not getting anything. Oakman said he was foolish if he did not; that he (Oakman) was getting his; that he had come to the time in life when he had to look out for himself. He said: "I am getting well paid for what I do, and you are a blank fool if you are not getting well paid for what you do." He said that he had been promised and was to receive $20,000 for managing the Wayne County campaign for Newberry (444, 445).

During the primary campaign ex-Governor Osborn and Milton Oakman had a conversation, in which the Governor said to him: "Milt, I understand why you are not supporting me, but I have no feeling in the matter whatsoever. It seems to be to your interest. I was up there in Lansing, and they told me you were to receive $25,000, and at that time had $12,500." Oakman said that it was made very clear to him that his interest was to be with Mr. Newberry, and he had to look out for himself; that Governor Osborn knew the character of the fight and what it took to put it up in Wayne County, and it was to his interest (224).

The Wayne County Newberry committee, of which Milton Oakman was chairman (155), had its offices in connection with the Newberry Headquarters (77, 80, 82, 89, 91). He secured Zalie B.

Clago to work with him (77, 80, 89, 91), and employed other office help (88, 89). Oakman's office help was paid by Newberry general headquarters (89, 92). Mr. Oakman was not only in the Wayne County department of headquarters but often in the main headquarters and in Mr. King's room (92, 82, 132). He was county clerk and requested his deputy clerks to support Mr. Newberry (451).

He gave a smoker in his home and asked the men to support Newberry (457). J. Scott Hunter was present, and he later secured $600 from the defendant Emery, which he spent for drinks and cigars (484).

He went to New York on several occasions to see Mr. Newberry.

Mr. Oakman contracted to carry Newberry advertising in the Abend Post of Detroit, and the articles were written from suggestions made by Mr. Oakman. The Abend Post was printed in German and carried thirteen of these advertisements in July and August.

Oakman paid $227.50 for these, but Mr. Newberry's picture was omitted, and the committee omitted to mention the name of the paper or the $227.50 in the report of expenditures (533, 534, 253 to 275).

On March 13, in a letter from Mr. King to Mr. Newberry, he spoke of one of Mr. Oakman's visits, and said he had mentioned to Oakman the luncheon he had had with Mr. John Mitchell, the labor leader (689).

On April 13, in another letter to King, he said:

> Until I hear from you in regard to the members of the Wayne County Committee I

shall not write to them, for as you say, Mr. Oakman may take the message which I sent through him as sufficient (704).

On May 18, Mr. King wrote Mr. Newberry from Detroit:

This morning I had a long visit with Milton Oakman, and he tells me everything is going well here (739).

On July 6, Mr. King wrote Mr. Newberry:

I called on Pliny W. Marsh. He is connected with the Detroit Citizens' League, which put over the new charter. Mr. Marsh is under some obligations to me and he was very friendly. I laid the Wayne County situation before him, stating that Mr. Oakman was interested in your candidacy long before I was, and, in reality I had no jurisdiction over him at all; that I knew if Wayne County were lost to us I would be given the blame, and that if it went the other way, he would get the credit, although, personally, I did not object to that. This was the point, however, that Marsh objected to. He said, it being generally understood that Mr. Oakman was the Newberry manager in Wayne County, Mr. Oakman, would, if he won out, be the king in county politics for a long time to come, which he did not think was a desirable thing. In order to get around this I suggested that we might have a campaign committee here as in other counties—in fact, this is the only county in the State where we are depending on just one man—a very poor practice, I think. Mr. Marsh said he would advise with me in the selection of such a committee, but thought it best not to be publicly affiliated. I think may be I can get this notion out of his head. Any way, he will help all he can (824).

On July 9, Mr. Newberry answered this letter and said:

> Your information about the Wayne County situation does not surprise me at all, and I am quite prepared for any kind of a shift that Mr. Oakman may find that his personal political future requires. Your idea of a separate organization in Wayne County, possibly in cooperation with Pliny W. Marsh, of the Detroit Citizens' League, is, I think, a very necessary precaution, as a change in Mr. Oakman's mind, under present conditions, would leave us without the slightest organization in the very place where we must secure a large, favorable vote in order to insure success (826).

On July 20, Mr. King wrote Mr. Newberry:

> Milt Oakman has apparently waked up and is going strong. He is now working out a precinct organization which I am sure will get results.

In the same letter he said:

> E. W. Yost, Commissioner of Schools, is taking an active interest and will be very helpful. Milt will probably have his own people also, but we are working together on the proposition so that there will be no conflict (830, 832).

On August 20, Mr. King wrote Mr. Newberry, with reference to Detroit:

> We have precinct organizations in nineteen wards in the city. This is supplemental to Mr. Oakman's work (896).

CHARLES A. FLOYD.

The name of Charles A. Floyd appeared on the stationery of the committee as secretary (94). He

was chosen by King in March (673, 674), and Mr. Newberry was so informed on March 7 (686), and wrote King stating he "was glad to know that you have received in Mr. Floyd a man whose qualifications are exactly what you require for the work to be done" (688).

In April, 1918, the Committee theretofore with Detroit headquarters, branched out and established headquarters in Grand Rapids. They rented a suite of rooms, placed the defendant, Charles Floyd, in charge, transferred one of the publicity department, viz, Mr. James B. Haskins, from the Detroit office to the Grand Rapids office and hired a small stenographic force (83, 84, 112, 113, 668, 673, 674).

This arrangement divided the territory. Grand Rapids was made the center of a large number of counties on the western side of Michigan and the work done in the Grand Rapids office for the territory it embraced was largely a repetition of the work done in the Detroit headquarters.

A great deal of money was handled out of Grand Rapids headquarters and one of the chief distributors of money was the defendant, Charles Floyd (97, 99, 100, 102, 162, 168, 174, 175, 192, 195, 220, 221, 229, 230, 235, 284, 298, 351, 352, 362, 419, 593).

The defendant Floyd, on April 27, approximately the time when he opened the Newberry headquarters in Grand Rapids, opened an account with the Commercial Savings Bank of Grand Rapids and from that date to September 9, 1918, deposited $11,280.00 (112 to 115). He carried an account also in the Old National Bank, of Grand Rapids, and from April 2 to August 23 deposited

$4,978.00 there (136, 137). He issued checks on both funds to pay Newberry Senatorial accounts (168).

However, he paid most bills in cash.

He helped organize the western part of Michigan in behalf of Mr. Newberry.

He secured August Field as Newberry chairman for Manistee County and on three occasions gave him cash aggregating $600 (228 to 230).

He saw M. A. Barber, who was made secretary of the organization for Emmet County, and sent him $150 (351, 352).

In company with King he called upon George A. Murray, of Muskegon, and asked him if there was anything he could do to get the railroad men lined up for Mr. Newberry, and said anything he could do along that line they would take care of him. Murray did as requested, and was sent $300 from Grand Rapids. He published an article in the Railway Men's Relief Association Magazine. The Grand Rapids headquarters ordered 20,000 extra copies, and for this he received $400, $150 from Grand Rapids headquarters and $250 from Detroit headquarters (195, 196).

James C. Quinlan, a traveling man, asked Floyd if there was something he (Quinlan) might find out in the north part of the State, while on his trip. Floyd told him to do so. He saw Floyd after the trip, gave the condition, and Floyd asked if he had any expense. He told him somewhere around $25 for the purchase of cigars "and entertaining in the line of taking a friend out to lunch or something of that sort." Floyd gave him $25 and odd cents (220, 221).

Allan K. Moore was employed as a general agent by the defendant King, and asked to go into the Upper Peninsula and sound out public sentiment. He was given $100.00 at the time to cover traveling expenses and hotel bills. He went to the Upper Peninsula, found out whether the men he talked with favored Mr. Newberry and wrote Mr. King each evening, telling him whether these men were favorable or unfavorable.

He saw Mr. King, and the salary of $75.00 per week was agreed upon (96, 97).

He worked only a few weeks in the Upper Peninsula because of objection to him on the part of the defendant, Roger Andrews. He was then given work exclusively among railroad men. This work was assigned by the defendant Floyd, who told him that he wanted Moore to go among railroad men and get them to circulate petitions for Mr. Newberry, and said, "You cannot expect that they are going to do this work for nothing." At the time Floyd gave him $300.00 in cash to pay out among railroad men. Moore, sometimes alone, another time accompanied by the defendant, William Smith, and at another time accompanied by George Murray, President of the Railway Men's Relief Association, and editor of their newspaper, made many visits over the state calling upon railroad men in various branches. He gave these men Newberry nominating petitions and distributed among them between eight and nine hundred dollars. Moore worked twenty weeks for the Newberry committee and received over $1,500.00 in salary, $1,219.00 expense money, and between $800.00 and $900.00, which he distributed among the railroad men to whom he gave the Newberry

nominating petitions. The total amount received by him was approximately $3,600.00, the payments made at various times and all in cash except the first $100.00. Floyd paid him personally several times. Each time he paid out sums he told Floyd about it (99 to 103).

Mr. Truman H. Newberry was fully informed concerning the activities of Mr. A. K. Moore and Mr. George R. Murray (896, 898 to 902).

On July 26, 1918, the defendant Floyd wrote the defendant King that 178 nominating petitions, including approximately 7,200 names, had been received from railroad men; that the petitions had been handled by 63 railroad employees, in all branches of the business, who were interested in saying everything they could for Mr. Newberry; that Mr. Murray was devoting a month of his time to visiting the various locals and "interesting the boys in our cause." He stated that Mr. Murray had visited all of the division points in the Lower Peninsula and had arranged with all of his departments to circulate petitions and boost for Mr. Newberry; that he intended to devote all his time to campaigning with joint meetings of the various union men at all division points. He named 23 cities in which Mr. Murray would address the unions. He further stated that another complete trip would be made by Mr. A. K. Moore, who would visit each of the men who had circulated petitions and keep the enthusiasm up until the final day (847, 848).

This letter when received by Mr. King was forwarded by him to Mr. Newberry (688).

Oscar E. Kilstrom, an officer of the Bolo Club, had a talk with Floyd with reference to organizing

Bolo Clubs; made a trip in connection with the Bolo Club, and Floyd on his return gave him $25 (298).

Floyd told August Kleibusch, a farmer of Allegan County, that he had "cards and stuff" to distribute for Mr. Newberry, and if he would be willing to handle them he would give him $25. He gave him $25 cash at the time and later sent him about 100 small cards (162).

He sent $35 to Orvil Dennis (168), secretary of the committee for Missaukee County (153).

On two occasions Floyd gave money to William H. Yearnd, Newberry county chairman for Wexford County (155). Once he gave him two twenty-dollar bills to pay for a Newberry supper, attended by King and Floyd, and another time he gave him $100 (173 to 176).

He was in Van Buren County securing a manager (183).

He paid money to Alex W. Bisaland, Newberry chairman for Oscodo County (192, 193).

He gave an order to a paper company for a ton of print paper, to be sent to the defendant Nowak, and asked that the bill be charged to the Newberry senatorial committee, and the bill, amounting to $126.16, was paid by it (221, 222).

He gave $50 to Herbert W. Davis (235), secretary of the committee for Lake County (152).

Floyd gave Charles Nowrot, of Grand Rapids, $80 to defray Mr. Newberry's expense of meetings, where he distributed cigars and soft drinks (284, 285).

He gave John Smolinski $12.20 railroad fare and $30 to repay him for money expended in mailing out editorials to Polish people (362, 363).

He gave Richard Allen, a railroad man, $50 to $100 (418, 419).

In company with King, he called upon George A. Glerum, of Osceola County. King asked him to do something with the Newberry campaign. He became chairman (154). Floyd gave him $70 (393).

Harry Viger was employed to work out of Grand Rapids headquarters at $25 per week. He talked with Floyd about the work and received instructions from him. Floyd paid him sometimes, and included amounts expended for gasoline, oil, puncture, meals (83, 84).

The county officers of the committee in making reports to headquarters often reported that they had received less money than was in fact received by them, and were told to make this understatement by the defendant Floyd (175, 176, 229, 230).

Floyd visited Mr. Newberry in New York with defendants King and Templeton (228). Newberry requested King to bring him to New York (818, 823).

The aggregate amount, stated by the Blair report, that was paid to or passed through the hands of Charles Floyd is $12,263.72. The books of the committee showed that $10,750.90 passed to him or through his hands, and that approximately $8,000 went to him on September 6 (607).

Among the items shown by the report as received by Floyd are: Expense of distributing literature in counties, $1,874.80; postage for county committees, $840.99; printing and stationery for county committees, $751.10 (276); clerical expenses county committees, $1,203.68; expenses of county committees in holding meetings, $901.50 (277);

county committees rent, furniture, light, and other expenses, $949.43; county committees for telegraph and telephone charges, $549.82; traveling expenses for Floyd, $1,084; and for county committees, $1,277.58 (279); expense in counties canvassing votes and tabulating lists, $2,107.20 (280).

Newberry and King wrote and telegraphed many times with reference to Floyd and his work (686, 688, 706, 749, 750, 754, 760, 779, 800, 816, 819, 823, 847, 848, 849, 851, 898, 899, 900).

HANNIBAL A. HOPKINS.

Mr. Hopkins was director of publicity (94) and was personally selected by King at a salary of $500 per month (667). The publicity campaign was under his supervision.

On March 19, King wrote Newberry that Hopkins was a distinct acquisition, and he thought "we were most fortunate to get him" (691).

At an early date he prepared a form of letter which was sent to the newspapers and magazines in the State requesting the editor to send the committee their space rate for advertising. Mr. Hopkins prepared a form of contract which was signed in duplicate and mailed to the newspaper editor, containing the contract price fixed by the editor and which the editor was asked to sign, retain a copy and send the other copy to the Newberry committee (81, 82, 235, 236, 346, 347, 592, 593). For 13 consecutive weeks they published 13 separate advertisements in over 500 papers in Michigan (81, 82, 253 to 275). They used church papers, farm papers, lodge publications, labor papers, and papers published in foreign languages.

The advertisements were contained in the Social Moose, the Odd Fellow, the Catholic Vigil, the Michigan Catholic, the Jewish Chronicle, the Christian Journal, the Michigan Christian Advocate, the Upper Peninsula Farmer, De Hallandasche Farmer, Michigan Business Farming, Finnish Printing Company, Onglisko Domawe Pub. Co., The Russian Life, The Belgian Press, The Romulus Roman, The Finnish Republican, La Tribuna Italiana, Italian Weekly, The Italian Publishing Co., The Magyar Hirlap (a Polish paper), D. A. Guraboneise (Dongo) Hungarian, and two papers published in the German language, the names of which were not included in the list of names published as having carried these advertisements and having received money for so doing (253, 275).

The Saginaw Journal, published during all the time in the German langauge, had a contract with the Newberry Senatorial Committee, and received $75.00 from it. It carried the advertising during all of June and July and one issue in August. A copy of each issue was mailed to the Newberry Committee. No report of this expenditure was made (533, 534, 253 to 275).

The Saginaw Valley Farmer, a monthly paper, published also at Saginaw, Michigan, carried 22 separate advertisements of Truman H. Newberry during June, July, and August. No report of this expenditure was made (591, 592).

The various advertisements which were carried were prepared by the defendants Hopkins, Calnon, and King (81, 82).

In the report of receipts and expenditures prepared and published by the defendants they admit

that they spent the sum of $45,728.08, which went directly to the newspaper publishers and a large additional sum in clerical help necessary for newspaper advertising (600).

They spent a much larger sum for newspaper advertising than the report shows. The report shows that the Detroit Free Press was paid $1,132.43. The amount actually paid was $1,885.50. The report shows that the Detroit Journal was paid $612.36, and the amount paid was $862.12 (574, 575).

The evidence showed that fourteen papers, which received $1,100.44, were not mentioned in the report, and that no sum whatever was credited as having been paid them; and that eleven papers were credited with having received $1,365.33 less than they actually received (541, 542, 543, 540, 539, 538, 536, 535, 534, 522, 513, 514, 502, 520, 566, 591, 592, 574, 575, 533, 534, 523).

All contracts for advertising were filed, indexed, and cross indexed, and each advertisement was examined by office assistants. A cartoonist was employed to draw various cartoons, and the advertisements when prepared were sent to the Western Newspaper Union, where plates of the advertisement were prepared. The advertisements to the newspapers were sent out in plate form (81, 82).

Mr. Hopkins employed the Campbell-Ewald Co. of Detroit, in connection with the preparation of the advertisements and illustration matter and gave instructions with reference to it (574).

On March 19, Mr. King informed Mr. Newberry that Mr. Hopkins was sending a circular letter to

the county papers, and that each paper was being sent one of Mr. Newberry's cuts. Mr. Newberry was fully advised as to the newspaper campaign, and in a letter written by the defendant, Emory, on March 1st, to J. Burt Keily, he stated that they "had kept out of extensive publicity at Mr. Newberry's personal request, pending the closing of the Liberty Loan and Red Cross drives" (3[illegible]25).

In a letter dated April 13th, to Mr. King, Mr. Newberry said: "I am glad Mr. Warner is scared out, *and as we keep our publicity work at full pressure,* it will be harder and harder for any new man to get any kind of a start that will make it seem worth while for him to be a serious candidate" (703, 704).

In a letter bearing date May 23, 1918, Mr. Newberry said: "If, in your opinion I should, by the use of these letters, now declare myself a candidate under the primary law, *would it not terminate our present plan of publicity?*" (741).

On March 21, 1918, Mr. King wrote Mr. Newberry with reference to putting out a platform, and said: "This would give our Publicity Department something to talk about and help keep up the interest" (694).

On August 15, King wrote Newberry with reference to two advertisements as follows:

"I am enclosing herewith a proof of an advertisement which will appear next week, showing the endorsement of leading farmers and men interested in agricultural matters throughout the state. This ought to help.

"Our only weakness is the labor vote, and my reports indicate that we are getting stronger there. The Flint Labor News, which has been strongly

Osborne is weakening and I am sending a man there to-day with a page advertisement for insertion just before the primaries" (888).

On August 10, Mr. Newberry wrote Mr. King concerning a contemplated visit to Col. Roosevelt, and said: "Will probably hear something of interest—particularly Osborne's side of the case, *and probably a criticism of the amount of publicity that has been found necessary*" (882, 883).

In April, Mr. Hopkins visited Mr. Newberry in New York, and his bill was charged to and paid by Mr. Newberry (228).

The Blair report shows $8,465 to have been paid to or through Mr. Hopkins (607).

ROGER M. ANDREWS.

Andrews was active from the beginning (59). On March 24th, in company with King and Templeton, he visited Mr. Newberry in New York, and his hotel bill, amounting to $41.10, was charged to and paid by Mr. Newberry (227, 228). On February 26, by prearrangement, he met defendants Templeton and Cody in Chicago (372, 373); on April 16th he met King there (374, 375); and in the week preceding July 5th he again met King and others in Chicago (827, 828). He made telegraphic arrangements to meet Floyd (377), Chilson (379), and Yelland (379), Newberry chairman of Delta County (150). In July the defendant Phillips telegraphed him with reference to the film "Our Navy": "Your copy of film will be shipped Tuesday," etc. (378).

On April 13 King referred to a telegram received from Andrews, informed him that every-

thing was going well in southern Michigan, and asked Andrews to call him on the telephone (374).

On August 17 Yelland telegraphed King:

> Andrews left for Detroit. Must have help first of week. We have them on the go * * *. We have a most effective organization. Have explained to Andrews; he will report to you (402).

On August 12 Andrews telegraphed Yelland from Detroit:

> Your plans approved and congratulate you upon excellent work; will telephone you Wednesday and probably see you Thursday morning (403).

On August 18 Yelland telegraphed Andrews:

> Your telegram put new life in our organization. I promise to give Newberry a substantial majority in Delta County (403).

On August 21 McGregor telegraphed King:

> Do not allow Andrews to interfere with any counties in Upper Peninsula, except Menominee, as to speakers or anything else. Sherwood and myself have been all afternoon fixing up his butting in on speakers. Our committees can make their own arrangements. We wouldn't have the fight in Delta if it were not for him. Sherwood and Magnum endorse the above (392).

On March 30, "a high official of the Cleveland Cliffs Co." called Mr. Newberry on the telephone from Cleveland with reference to two men "who control the mine situation." The high official said he knew that Mr. Andrews had done excellent work for Mr. Newberry, but expressed the hope "that Mr. Andrews will not be named to

handle the mining situation." Mr. Newberry wrote this to Mr. King, and said that before saying anything to Mr. Andrews he "would like to have the advice of Mr. Templeton" and King (697, 698).

In a letter to Mr. King on April 4, Mr. Newberry refers to the same subject, and said he hoped King would "frankly discuss the matter with Roger Andrews, and in order to make it easier for him to understand, you might state that you, yourself, were going to have the mining people to handle their own situation without advice or suggestion from anyone outside," etc. (701).

King met Andrews, by arrangement, in Chicago, and on April 16 wrote Mr. Newberry that the situation had been taken care of, that he could talk with Andrews without fear of hurting his feelings, that Andrews realized that it would be unwise for him to be active in localities where enemies were influential. The letter stated:

"He has already started some work with my approval, which will not conflict in any way with the organization which we have in mind, and which we will go ahead without regard to him. I told him I should wish to consult him about everything that is done, etc." (705, 706).

On May 15, Mr. King wrote Mr. Newberry:

"I arrived in Menominee Saturday evening at 10:45 o'clock and was met at the train by Roger M. Andrews. Sunday forenoon I spent with Andrews, going over with him the situation in the Upper Peninsula, carefully reviewing my reports. We agreed fully as to the condition in each county" (734).

In a detailed report to Mr. Newberry of every county in Michigan, he was informed:

" Roger Andrews is looking after Menominee County and guarantees it " (764).

On July 5, Mr. Andrews wrote to Mr. Newberry, and told him among other things of a meeting he attended in Chicago the previous week at which Mr. King and others were present (827, 828).

Andrews urged Herbert J. Rushton, a lawyer of Escanaba to become a candidate for state senator and promised the help of the newspapers belonging to Mr. Andrews. Rushton became a candidate and soon after found out that Andrews was opposing him. Andrews, in the original conversation, promised that when Rushton announced he would see that the announcement got into his papers. The announcement of Rushton was carried in the other papers of the district but omitted in Andrews' papers. Soon afterwards Andrews said to Rushton: " Now, I am going to lay my cards on the table face up. You have got to support Newberry for the United States Senate." Rushton told him that he could not do so. Andrews supported the opponent of Rushton and Rushton was defeated (193 to 195). This opponent was W. A. Lamire (193), the same man whom Yelland, Newberry chairman for Delta County and closely associated with Andrews, went to Grand Rapids to arrange for, and who telegraphed Lamire:

" Have all arranged for at least three hundred dollars. Do not make any announcement until I return Saturday morning " (493).

Andrews sent Newberry advertising to newspapers in addition to the advertising they received from Detroit headquarters (249). He sent a telegram:

" Lists of voters ten. Distributing printed supplies, buttons, and making canvas eighty-five. Printing instruction ballots twenty-five forty. Letters to voters and postage eighty-six twelve period total two hundred fifty-six dollars twelve cents" (378).

He asked Louis Desetell if he was a Newberry man, gave him cards to distribute and an envelope containing a $10 bill (508, 509).

He placed a ten dollar bill in the pocket of John Leaveck (511).

RICHARD H. FLETCHER.

Mr. Fletcher became active before Mr. Newberry's candidacy was publicly announced.

He told Dr. Hugh Stuart, of Flint, in January, in the lobby of the Capitol Building, at Lansing, that he understood Stuart was going to support Osborn for United States Senator. Fletcher said: " You had better wait and not declare yourself for anybody for some time, because we have got a man coming out for United States Senator that wants to be United States Senator bad, and is going to spend a lot of money to get it; we want you with us." Stuart asked him who it was and Fletcher replied that it was a man who lived in Detroit, " and right at the present time I can not give you his name but we will know in a few days." Within two or three days after that Mr. Newberry was announced (316). He was the

Newberry secretary for Bay County, and did work throughout the State (149).

He was very active in connection with the Helme petitions. He gave Terry Kelly blank Helme petitions at Saginaw, and fifty dollars, and told him to circulate them and send them to Lansing (219, 220).

The defendant, Henry, placed Helme petitions in the hands of George McKinley of Flint, and offered him $100 to circulate them. On the day preceding the last day for filing them, Fletcher called McKinley on the telephone from Lansing and asked what he had done with the petitions, and said " perhaps I will receive them to-night " (245, 246).

Many forged Helme petitions were filed, and the evidence showed that Fletcher committed forgeries (578 to 580, 584 to 590, 562, 563, 243, 244, 245, 350).

He attempted to employ Thomas F. Downey, of Detroit, to work for Mr. Newberry and said he would be compensated for his services (533).

Fletcher was in company with the defendants, King, Henry, and Castator, in Flint (249, 250, 333, 473).

William H. McKeighan, former mayor of Flint, was approached by the defendants Fletcher, Henry, Castator, and King about a week or ten days before the primary (312 to 314, 429, 430, 480, 481, 331, 333, 366). King asked him to line up for Newberry and said: " Well, what do you need to keep your line up here?" and McKeighan replied: " What do you mean?" King then said: " Well, what expenses is it going to entail? We have quite a large expense account we can allow. We

expect you don't want any for yourself, but you boys will need it for your workers." The defendant Fletcher said: "I told you before we came up here there was no use talking money with him. I know how to straighten him out. McKeighan has been with me before. He knows how I stand in Lansing, and regardless of whether Newberry carries the State of Michigan and goes as a United States Senator, or whether he does not, we will still retain power in the State of Michigan; and he knows well enough that his case is up in the Supreme Court there, and I am in shape so I can see whether it is affirmed or reversed, and if he wants to go out and work for Newberry, we will see that he does not go to jail, his case will be reversed; and if he don't, we will watch his district, regardless of whether Newberry carries the State of Michigan or not, it does not matter. If he carries this district for us we will take care of you; if you don't you are going to jail" (312 to 314).

Dr. Hugh A. Stuart, of Flint, was a candidate for State Senator. About the middle of June Mr. Henry called him up and asked him to come to the hotel, where he went and found the defendant Fletcher with the defendant Henry. Fletcher said to Stuart: "I have come down to Flint to fix up some of you boys that are not in line. You are a candidate for State Senator a second time. We are going to defeat every man, either State or county, who does not line up with the Newberry campaign. Mr. Henry here is handling the money in this county. He is going to build up an organization strong enough to defeat all of you men who

are not with Newberry. You are going to be defeated if you don't get on and help elect him. The man who wants to be a candidate for State Senator against you is waiting for us to give him our support of the Newberry organization, along with his own, to put him across" (316, 317). Stuart declined.

In the same conversation the defendant Henry said that they had sent a good many of the men through the county and had already taken care of most of the townships, and that he was going to see that the men in the county that worked for Newberry would be against Stuart. An opposing candidate was announced and Stuart was defeated (316, 317).

He told William Lynch, of Bay County: "You always holler for stone roads. If you want any of my support for stone roads you will have to get out and hustle for Mr. Newberry," and said that the Stone Board would not get its appropriation if the members did not support Newberry (521).

Mr. King wrote Mr. Newberry on several occasions concerning the defendant Fletcher.

On May 18, 1918, he wrote as follows:

Yesterday afternoon I spent with Richard H. Fletcher, State Labor Commissioner, who is certainly doing yeoman service. He is simply going "sled length" and is doing mighty good work. You might write him a personal letter, if you will. His address is Lansing (739).

On August 6, 1918, in writing to Mr. Newberry concerning Midland County, Mr. King said:

In this county we have purposely held off on the recommendation of Labor Commissioner Fletcher, who is close to the situation here (866).

Fletcher had a conversation with Frank M. Sparks, a newspaper man, of Grand Rapids, in which something was said about the Newberry expenditures. Sparks said that rather than $176,000, the campaign must have cost nearer a half million, and Fletcher said: "A half million hell! It cost nearer 800,000, and I know what I am talking about" (251).

FRED HENRY.

A portion of the testimony against Henry is set out under the statement showing the defendant Fletcher's connection and will not be repeated here.

He was chairman of the Newberry committee for Genesee County (Flint) (151).

Fred Henry asked Hugh Madigan, of Flint, to support Newberry and said that he did not expect Madigan to devote his time for nothing and asked what he would expect if he would swing to Newberry, and Madigan told him $150. Henry said that he would expect him to devote all of his time and Madigan said he could not do it for the sum named, and that Henry then said if Madigan went out and devoted all his time he would get twice $150. At the time of the conversation he gave Madigan $15. Later he paid Madigan $50 in the lobby of a hotel. He asked Madigan to get poll workers throughout the factory to work at the polls on primary day. They had several talks on securing workers for the primary and Madigan recommended certain men who were afterwards employed and paid. After that Henry gave him $50 or $60. He received $10 twice between first

payment and the payment in the lobby (331 to 333).

He told Thomas J. Halligan that he would give him $50 a week until the primary if he would get out and work for Mr. Newberry. Halligan wanted more and Henry said he would see King and Fletcher. He told Halligan to go ahead and he would take care of him (365, 366).

He gave Pead Wynne Newberry cards. Wynne did some work and Henry gave him $50 (473).

He placed $10 in the pocket of Wilson Young (249, 250).

He gave Fray Diem a box partly filled with Newberry buttons and when Diem opened the box he found a $20 bill (368).

He gave Harry E. Corcoran two cigars wrapped in tin foil. On unwrapping them Corcoran discovered a $10 bill (480).

He told Madigan to see good workers, and he would let them know what was expected and "take care of them" (332).

A number of workers appeared at Henry's home one evening, and were seated on the porch. He called them into the house, one at a time, and gave them amounts ranging from $5 to $50 or $60 (332, 453, 454).

He employed J. Love to work at the polls, drove him to the election precinct, gave him some Newberry cards, and later $10 (483).

He asked Jesse H. Prescott "to line up 6 or 8 different men to work for the Newberry campaign at the Buick factory * * * that he would take care of them financially." He told Mr. Henry he would not support Mr. Newberry and

Henry said he was foolish; "that there was a chance to get a nice piece of change out of it; that he had just banked $2,000 and more was coming" (481).

He held a Newberry meeting in his house, which was attended by King and Fletcher, and men who received money from him. This was the night that King, Fletcher and Henry called upon McKeighan (333, 366, 368, 249).

He gave Wilson Young $10 on each of two occasions (249, 250).

B. FRANK EMERY.

After the selection of King as executive chairman, the first man employed by him was B. Frank Emery, upon a salary, first, of $200 a month and then of $300 (665). Emery helped to get the office force together (666).

He was the principal paymaster for the organization and his payments were largely made in cash.

Employees of all kinds were paid in cash (76, 80, 89, 92, 97, to 103, 131, 132, 147, 148).

Except for newspaper advertising very few payments were made by check. Practically all other bills were paid in cash. No receipts were taken (97 to 103, 163, 168, 171, 226, 248, 250, 419). The newspapers and a few other bills were paid by voucher checks and the vouchers destroyed (320, 677). The Blair report shows that $9,861.34 came to or passed through the hands of B. F. Emery, and, in addition, he is charged jointly in the report with H. O. Turner, with $19,059.74 (607).

The Blair report makes the following, among other charges, against Emery:

Clerical work in connection with speakers' bureau, through Emery and Turner, $1,789.55; expense of assistant secretaries in connection with speakers' bureau, through Emery and Turner, $1,987.50 (268); clerical expense in connection with mailing letters, through Emery and Turner, $10,791.31; clerical expense in connection with distribution of literature, through Emery and Turner, $849.28; postage for county committees, through Emery, $309.92; printing and stationery for county committees, through Emery, $260.50 (276); clerical expense of county committees, through Emery, $1,957.71; expenses of assistant secretaries in arranging public meetings, through Emery, $993.75; expenses of county committees in holding public meetings, through Emery, $372.80 (277); county committees rent, furniture, light, and other expenses, through Emery, $30 (278); expenses of county committees for telegraph and telephone, through Emery, $131.81; clerical expense in general office in connection with securing and transcribing lists of voters, through Emery, $894.27 (280).

A great deal of money of the Newberry committee was not kept in checking accounts. There was a vault in the Detroit headquarters, and " bunches of bills " were kept there in a box, to which the defendants Emery and Turner had sole access, and which they took out and distributed (147, 188, 80.)

On May 9, 1918, the defendant Emery rented a safety deposit box in the First and Old National Bank of Detroit. Money of the Newberry com-

mittee was kept in this vault, and many visits were paid to it by the defendants Emery and Turner. At first Emery alone went, and later the defendant Turner. On Turner's first visit he was refused the privilege of the box, but was later vouched for by the defendant Smith, manager of the Newberry estate, who had his office with the office of Mr. Truman H. Newberry. The money from the safety deposit vault was distributed, and the use of checks avoided (128, 131).

Mr. Blair, the treasurer, deposited some money in the Union Trust Company of Detroit, and this money was paid out on checks O. K'd by Emery (127).

Money contributed by the defendant John S. Newberry was delivered to Emery in cash (311, 312).

Emery went into Crawford County and called upon a banker, Marius Hanson. He informed Mr. Hanson that he was there in Mr. Newberry's interest, and asked about the sentiment in the county, etc., and picked up a magazine, put it in front of Mr. Hanson, and underneath or in the magazine was a fifty-dollar bill (304, 305).

King had informed Newberry that Emery was going to Crawford County to complete the organization, and that they hoped to have it backed up by the Hansons (753).

Scott Hunter went up to the Newberry headquarters at Detroit and Emery gave him $300.00 in cash. He spent the money for liquor and cigars and returned when Emery again gave him $300.00, which he spent in the same way (484, 485).

August Kelly received a letter from the defendant Reed, and in response went to the Newberry

Senatorial headquarters in Detroit, and talked to Emery who employed him at $25 a week and expenses to go to Alpena County and circulate petitions. Emery gave him the blank forms at headquarters. The Newberry committee paid him a little more than $200 for this (171, 172). He paid Francis O. Lindquist $4,557 for political work arranged for by Mr. Templeton (306 to 310). He, Turner and Floyd paid Allan K. Moore approximately $3,600 in cash. The activities of Moore appear under the Floyd statement. He gave $50 to J. Burt Keily (324), Newberry officer for Roscommon County (154).

Mr. King employed Angus G. MacEachron to talk among traveling men. He told Mr. King that in his order, the United Commercial Travelers of America, politics could not be talked in the council room, but they could talk about whatever they pleased just before and just after their meetings, and said he would call where there were meetings. These meetings were held on Saturday nights, and MacEachron visited various cities of the State. Mr. King agreed to pay him fifty dollars per week and expenses. He was paid $850.00, about $500.00 salary and the balance expenses. He included cigars for himself and others as expenses. The money was all paid in cash by Emery and Turner (404 to 406). He asked Willis R. Harrison to get up a rally, and gave him $25. Later he gave him $14.15 for rental and moving of piano and advertising (576). He paid cash for voters lists (161).

Emery visited Mr. Newberry in New York (228). He was busy over the state and Mr. Newberry was so informed (753, 766, 767, 768).

HARRY O. TURNER.

A considerable portion of the evidence against Turner is set out under the statement of the defendant Emery's activities, to which reference is made to avoid repetition.

He was an assistant secretary, active in Detroit headquarters, and, with Emery, is jointly charged in the Blair report with $19,059.74.

In the Blair report, he is charged specifically with $43.89, while the pay-roll record of the committee shows $1,743.25 (607).

Mr. Newberry was advised about Mr. Turner as well as Mr. Emery. On May 2 Mr. King wrote him: " I am going to try to spend more time out in the State and less time in the office. Now that it has gotten to run so smoothly I am sure Mr. Emery and Mr. Turner will get along all right " (713).

ELBERT V. CHILSON.

The speakers' bureau in connection with Newberry Headquarters was presided over by the defendant Elbert V. Chilson (82). He looked after speaking dates and arrangements, and paid numerous speakers (341, 342, 343, 363, 365, 546, 547, 591, 657, 658). On July 6 Mr. King wrote Mr. Newberry: " Our Speakers' Bureau is getting organized and is rapidly getting in position to furnish speakers for grange picnics, rallies, etc." (825).

Mr. Chilson asked Mr. Charles C. Simons, of Detroit, to make some speeches for Mr. Newberry, and he made six or seven. Mr. Chilson told him to send in his bill, and he charged and received $200, and a " small item of expense " (546, 547).

Mr. Chilson asked Roy Herald, of Highland Park, Michigan, to make some speeches for Mr. Newberry. He spoke at Big Rapids and received $153.25, and made four speeches in Detroit, for which he received ninety dollars (341, 342).

Charles P. O'Neil, of Detroit, at the request of Chilson, who said he would be recompensed for his expenses and time, made several speeches for Mr. Newberry and received $300 (343).

John Smolenski, of Grand Rapids, was asked to address a meeting of Polish people at Gaylord, Michigan, and did so. Chilson wrote him asking for a statement of his expenses and services (362 to 364).

Chilson arranged with colored men to speak at a Sunday meeting in a colored church, and settled with them (591).

Other activities of Chilson are set out under the statement concerning defendant Ladd.

The activities of defendant Chilson, head of the Speakers' Bureau, were not confined to that department. There were times when he acted in the capacity of a field agent and there were numerous occasions on which he passed out Newberry money.

He called upon William H. Porter in Lansing and told him he was there to get some one to look after Mr. Newberry's interests in his candidacy and asked Mr. Porter if he would take hold of the matter in the county and organize it. He said there was an organization to boost Mr. Newberry's candidacy and there was money enough in sight to finance the campaign. Porter said to him: "You and I have been in politics a good many years and you know I never took a dollar for any work I did or for expenses." Chilson asked him

if he had anyone in mind he would recommend (340).

Chilson gave Marshall Campell, of Ingham County, $15 to repay him for money Campbell had given to somebody else in Mr. Newberry's behalf (488, 489).

He took blank Helme petitions to Frank Bovee, of Lansing, and gave him $20 and said: "That will do to pay for the man you have to circulate them" (364, 365).

In a talk with Frank P. Robards at Hillsdale, Michigan, Chilson said he had been at the Newberry headquarters in Detroit, "that the boys were doing business, that they had tapped the barrel, and the first thing they gave the city committee $50,000 for their influence for Newberry; that they were spending money like drunken sailors" (329).

The Blair report shows expenses through Chilson in connection with county committees and for traveling expenses (276, 277, 278, 279).

JAMES F. McGREGOR.

James F. McGregor was an assistant secretary of the Newberry committee (276, 277, 279, 280) and a field agent in charge of the Upper Peninsula of Michigan (680, 681). He was in company with King there (159) and with Floyd (400). He, with King, called upon M. E. Richards, who was asked to and became chairman of the Newberry committee for Iron County. McGregor paid him in the neighborhood of $60.

He directed H. S. Jennings, an officer of the Newberry organization in Alger County, about

getting out the vote on primary day. He asked him to arrange for autos and workers on primary day, and said the Newberry Central Committee had made an apportionment of money to spend on primary day all over the state and that Alger County had been allotted $300 (189, 190). A short time later G. Sherman Collins, of Munising, who was associated with Mr. Jennings on the committee, received a check for $300 from Detroit on the Commonwealth Savings Bank, cashed the check and gave the money to Jennings (233, 234).

He attempted to employ Albert J. Young to take the management of the Newberry campaign in the northern part of Michigan (85, 86).

He made the statement in a hotel at Munising that he was going down to New York to see the Commodore (Newberry), and somebody suggested that he get another $176,000. McGregor replied: "We are going to get a real barrel this time" (189, 190).

The Blair report shows $3,010.57 to have passed from the committee to or through McGregor. Included in this was traveling expenses amounting to $599.60 (279), and $866.25 salary (280). His salary was greatly in excess of the amount shown by the report. He was employed more than twenty weeks and received a salary of $75 per week (680, 681).

Mr. McGregor telegraphed King and Floyd from many places concerning the condition in every county in the Upper Peninsula of Michigan with the exception of Alger and Keweenaw (381, 388, 389, 390). He stated in the telegrams that Marquette would "have complete committee as the rest" and named men in charge

(389); that a named county was "fine" (393), others "in good shape" (404, 494, 495, 496), another in "best of condition" (400), another "splendid"; that in others the organization was complete (494, 496); that a named county was for Newberry (393).

On August 21st he made "a good deal" for Iron County. It was expected that the "deal" he made would "land" Iron County for Mr. Newberry and the same day he telegraphed both King and Floyd of his success (p. 393).

He went to Detroit for conferences with King (388, 495), received telegrams of congratulations from him (388), and directions to get in touch with local Newberry officials in the Upper Peninsula (388, 391).

He visited the local officials, made drives over the territory with them (400, 401, 402), and was in telegraphic communication with them (392, 403, 495).

He telegraphed Emery: "Yelland of Escanaba wired me have you sent Bohn what I asked" (495). Yelland and Bohn were respectively county chairmen of the Newberry committee in Delta and Luce Counties (150, 153). He received telegrams from Emery and Chilson (388, 395).

On October 25 he presented a card at Sault Ste. Marie, bearing his name "Assistant Secretary, Truman H. Newberry Senatorial Committee," etc. He dictated a letter to Truman H. Newberry, acknowledging receipt of a letter, and said that in reply "will give you more information with reference to the Upper Peninsula." He gave a full and detailed account of the situation in seven counties (164 to 167).

At the time of Mr. McGregor's appointment as field agent Mr. Newberry wrote Mr. King: "All the men you have selected seem peculiarly adapted for their various districts, and I am particularly glad that you have found an opportunity to use Jim McGregor, which I know will please Mr. Warren, his friend" (704).

WILLIAM J. MICKEL.

James W. Helme was a candidate for United States Senator on the Democratic ticket at the 1918 primary, and his candidacy was "fostered and financed" by the defendants. (Brief for Plaintiffs in Error, p. 20.)

Helme was induced by the defendants to become a candidate.

Mickel, who had been a state dairy and food commissioner under Helme, was asked to call upon the defendant Floyd at the Newberry headquarters in Grand Rapids in June, 1918, and went there and talked with the defendants King and Floyd. He made a second trip to the headquarters, and they asked him if he had in mind any man to run for United States Senator on the Democratic ticket, and he suggested Helme. They asked him to write Helme, and prevail upon him to become a candidate. Mickel did so. Helme declined, and Mickel so informed King and Floyd, and they requested him to write again. He did, with the same result. They then said they would have somebody from Lansing see Helme. Later, he received a letter from Helme stating that he had changed his mind and would run, but that it was getting late to get nominating petitions in

on time. Mickel talked with Floyd and King about this, and they said they could have the necessary names on the petitions within twenty-four hours. Mickel suggested that they hire men to circulate petitions, and they told him they had men they could send to the Great Lakes and Camp Custer and they would pay them fifty dollars each and ten cents per name. Men were named by them who would look after procuring signatures throughout the state, and among them the defendants Fletcher, James Davis, and Welsh. He ordered stationery to be paid for by the Newberry committee, was given $20 per month by them to pay office expenses, and $50 per week to be given to Helme. He said the Newberry committee gave him $400 or $500 and promised to pay him for his work (624, 625, 626, 675, 676).

The money which was expended in behalf of Mr. Helme was furnished by the Newberry Senatorial Committee. They paid for the printing of Helme's primary petitions. They paid the rent for Helme headquarters. The organization became very active in his behalf. The defendant Castator had seen at least one prominent man in Detroit and attempted to persuade him to get Helme in the race (246, 247). When Helme entered, Castator, very active in the Newberry organization, went out circulating petitions. The defendant Charles Deland, Newberry manager for Jackson county, had the Helme petitions and paid Van Loomis twenty dollars to circulate them (89, 90). The defendant Fred Henry, Newberry manager for Genesee county, had the Helme petitions and offered George McKinley one hundred dollars to circulate them

(245, 246). The defendant, Richard Fletcher, Newberry manager for Bay County, gave Terry Kelly fifty dollars to circulate Helme petitions (219, 220). The defendant Rice, very active for Mr. Newberry, went to Chicago, and procured a large number of petitions for Helme in the Great Lakes Training School. Some money was paid by him (369, 370).

The defendant, George W. Welsh, secretary of the Kent County Newberry committee, and aid of Floyd in Grand Rapids headquarters, employed three men at five dollars per day each and expenses, to circulate Helme petitions in Grand Rapids, Grand Haven, Kalamazoo, and elsewhere, and authorized them to get others to circulate petitions and pay them ten cents for each name secured. He paid one man $30 plus railroad fare and hotel bill, another $25 and expenses, and reimbursed them for money they paid to get others to circulate petitions at ten cents per name (141, 142, 143, 144).

The defendant Chilson, head of the speakers' bureau at Detroit headquarters, gave Frank Boves, of Lansing, twenty dollars to circulate the Helme petitions (364, 365).

The defendant Bigger, a member of the organization in Calhoun County, tried to induce Benjamin O. Rush, of Kalamazoo, to circulate Helme petitions and offered him $25 for 250 names, or ten cents for every name secured (244, 621).

The defendant Matthews, chairman of the Newberry committee for Mason county, in conjunction with others, was interested in the circulation of Helme petitions in Mason county, and men were paid for circulating them there (233).

The idea in financing Helme's campaign was to nominate a candidate it would be easy for Mr. Newberry to defeat.

Mickel attended a convention at Saginaw, and made the statement that he was a Democrat but was going to work for Newberry; that he was going to put up some man on the Democratic ticket who wouldn't have any show, and would do that if he had to run himself. In the conversation he mentioned Mr. Helme's name (147, 148).

At the same convention Mickel seconded a resolution by the Spanish American War Veterans indorsing the candidacy of Mr. Newberry (298).

He made five trips to Adrian, Michigan, to see Mr. Helme and urge him to become a candidate, and finally did induce him by false representations that Democrats in Western Michigan were anxious for his candidacy, and had raised $500 to back him, and by a forged telegram, purporting to come from Grand Rapids Democrats (907–908).

The Bolo Club was furnished money by the Newberry organization (297, 298, 285, 532, 370) to assist Mr. Newberry, and Mickel was very active in this line (297, 298, 147, 148, 440).

Mickel had the Helme petitions printed by the defendant Rice and paid for them (285). He rented Helme headquarters at a hotel in Grand Rapids (286).

He was in Muskegon with Newberry advertising and said to William Moore: "This is our man." Later Mickel again saw Moore and had Helme petitions. He told Moore he was going to the Great Lakes Training Station and get some names (344).

Edward Freusdorf was present at a conversation between Mickel and Helme, in which the candidacy of Helme was discussed. Freusdorf spoke of the publicity Helme was receiving from surprising sources, remarked that it was a peculiar situation, and Mickel said either "They have all been fixed," or "That has been all fixed" (440).

Mickel saw Benjamin Barendsen about renting a room from him for Helme headquarters, and said the payment of the rent would be taken care of by him, that Barendsen need not be afraid of the rent; that it "would come all right, because it would come from the Newberry headquarters"; that he was representing Helme, "getting him in the field." He spoke of "long, green," and said he "was in it for the money that was in it." (541).

JOHN S. NEWBERRY.

John S. Newberry's direct connection with the transactions was the giving by him to the Newberry committee, sums aggregating $99,900. This consisted of twenty-nine contributions, ranging from $1,000 to $10,000 (281, 282).

Checks were drawn on Mr. John S. Newberry's account, and then the currency was delivered to the defendant Emery, or the defendant Smith (311).

John S. Newberry is a brother of Truman S. Newberry (43). He authorized his bank account to be used for the benefit of the campaign (44).

GEORGE S. LADD.

The defendant George S. Ladd is a resident of Sturbridge, Massachusetts, and has never resided

in the State of Michigan. During the campaign of 1918 he received a letter from Horatio S. Earle, asking him to come to Michigan. When he arrived at Detroit, approximately August 1st, he was told by Mr. Earle that it was the desire to elect Mr. Newberry Senator from Michigan, and asked whether or not Ladd would take the stump, and told him from the work he had done in the road campaign as a speaker he thought he could help. Earle escorted him to the Newberry headquarters, where Ladd met King and Chilson. Earle had told him that he wanted him to go on the speaking bureau, and introduced him to Chilson as the manager of the speaking bureau. Chilson mapped out the territory which Ladd was to cover and gave him $100 in cash at the time of the first meeting. Ladd was not advertised as speaking for Newberry, but was advertised as speaking in favor of good roads, and other subjects, at farmers' meetings. They told Ladd that his work would be more effective if he was not introduced as speaking for Newberry. He stayed in the State about four weeks, spoke about every other day, and went back to Detroit every two or three days and reported to Earle and King and to receive his itinerary from Chilson. He went wherever Chilson sent him, but was unable to name a single city, town, or county in which he spoke for Mr. Newberry. There were places in which he was barred from speaking. He was in the Detroit headquarters at various times. When he was given $100 cash by Chilson he gave no receipt for it. Just before he left Michigan Chilson gave him a draft for $350.

Prior to the time Mr. Ladd was taken to the Newberry headquarters and introduced to King and Chilson he had never met them, and he had no acquaintance with Mr. Newberry. In order to prepare him for the speeches he was to make throughout Michigan, Mr. Chilson gave Mr. Ladd the Newberry pamphlets for him to read. He took these pamphlets to the hotel the first day he was there and thus prepared for his speeches (624, 657,658, 659, 660).

On August 20th Mr. King wrote Mr. Newberry that meetings were being held in the State, inclosed the schedule of the State speaker, referred to others, and said that former master of the State grange, Ladd of Massachusetts, was on the stump (896).

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